

ACTUALLY 2 CASES  
WHERE A JG PHOTO  
WHICH WAS FIRST  
PUBLISHED IN NGM  
& WAS USED A 2ND  
TIME IN OTHER ISSUES  
OF NGM

# NORMAN DAVIS 6-PAGES CONFIDENTIAL!

ASSIGNMENTS UNDER THE 1909 COPYRIGHT ACT ( ALSO OTHER TRANSACTIONS)

page #1

June, 1960 Pennecamp Park assignment (Bill Garrett)

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July 3, 1989

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## THE DREAM:

IN THE EARLY 1940'S, I CAME UPON A LARGE COLLECTION OF BACK ISSUES OF THE NATIONAL GEOGRAPHIC MAGAZINES IN OUR NEIGHBOR'S BASEMENT STORAGE. AS A TEEN-AGER, I BECAME A REAL FAN OF THE MAGAZINE AND THE SOCIETY. DURING MY COLLEGE YEARS, I LEARNED BASICS OF PHOTO-JOURNALISM AND ONE OF MY AMBITIONS WAS TO DO WORK FOR THE NATIONAL GEOGRAPHIC MAGAZINE. I ADMIRERD THE SOCIETY FOR ITS ALTRUISTIC AIMS WHICH WERE DONE UNDER A NON-PROFIT STATUS. MY FIRST BIG BREAK CAME IN 1960 WITH THE CORAL REEF PARK ASSIGNMENT. FOR THE MAGAZINE.

## THE SOCIETY'S PUBLICATIONS:

WHEN I CAME ABOARD AS A FREE-LANCE PHOTOGRAPHER THE PUBLICATIONS OF THE SOCIETY FELL UNDER 5 DIFFERENT CATAGORIES WHICH WERE AVAILABLE TO MEMBERS ONLY ON A SEMI-EXCLUSIVE BASIS:

- 1). NATIONAL GEOGRAPHIC MAGAZINE
- 2). PUBLICATIONS FROM THE BOOK DIVISION
- 3). THE SCHOOL BULLETIN
- 4). PRODUCTS FROM THE FILM STRIP DIV.
- 5). MAPS FROM THE CARTOGRAPHIC DIV.

TO THE BEST OF MY KNOWLEDGE THESE PUBLICATIONS WERE NOT AVAILABLE TO BOOK-STORES OR NEWS STANDS.

## THE PHOTO REUSE POLICY OF THE SOCIETY:

THE  
EARLY  
60's

INITIALLY, THE OFFICIAL POLICY WAS THAT THEY WOULD NOT PAY FOR ADDITIONAL RE-USE OF PHOTOGRAPHS THAT WERE THEIR PROPERTY AND WERE FIRST PUBLISHED IN THE NATIONAL GEOGRAPHIC MAGAZINE. THIS BECAME VERY APPARENT WHEN THEY RE-USED\* MY PHOTOGRAPHS FROM THE JANUARY, 1962 ISSUE OF THE MAGAZINE IN A NEW EDITION OF "THE BOOK OF FISHES." THEY MUST HAVE HAD SOME SECOND THOUGHTS ON THIS POLICY AS THEY DID PAY ME AN ADDITIONAL \$200.00 FOR THE RE-USE OF ONE OF MY GEOGRAPHIC PHOTOS ON THE COVER OF THE FISH BOOK.

\*

THE  
MID  
60's

1964  
TO BE  
EXACT!

WHEN BOB GILKA STARTED A DIRECTOR OF PHOTOGRAPHY THEY DID HAVE A CHANGE OF POLICY AND STARTED TO MAKE ADDITIONAL PAYMENTS TO NON-STAFFERS WHOSE NGM PHOTOGRAPHS WERE LATER RE-USED IN OTHER PUBLICATIONS OF THE SOCIETY. ALL THROUGH OUR RELATIONSHIP THERE WAS A RELIABLE SOURCE OF PASSIVE INCOME COMING IN FROM "ROYALTIES" COMING FROM PREVIOUSLY PUBLISHED NGM PHOTOGRAPHS. THIS POLICY WAS OFFICIALLY STATED\*\* TO ME BY GILKA BEFORE I TOOK THE BUCK ISLAND ASSIGNMENT. INTERESTINGLY ENOUGH WAS THE RE-USE\*\*\* OF THE JANUARY, 1962 COVER PHOTO (AKA: MOVING COVER) AS A RE-USE IN AN ANNOUNCEMENT FOR THE SPECIAL PUB BOOK "WORLD BENEATH THE SEA". AT THAT TIME THE SOCIETY OWNED THE COPYRIGHT TO THIS PHOTO.

IN THE FALL OF 1985, WHEN I WROTE TO BILL GARRETT REQUESTING A COPYRIGHT ASSIGNMENT FOR THE PHOTOGRAPHS FROM THREE NGM ARTICLES, I LEFT THE DOOR OPEN FOR THEM TO CONTINUE RE-USE MY NGM PHOTOS IN OTHER SOCIETY NOT FOR PROFIT PUBLICATIONS. WHEN I RECEIVED THE ASSIGNMENT DOCUMENT, I WAS SURPRISED TO SEE THAT THEY DID NOT PUT THIS PROVISION INTO THEIR PAPERWORK. THEIR EXACT WORDING WAS....

"ALL RIGHT, TITLE AND INTEREST..."

FRED WARD TELLS ME HIS ASSIGNMENT DOCUMENT HAS THE SAME PRECISE WORDING IN IT.



# SEAHAWK

PH: 305/ 667-4051  
FAX: 305/ 667-3572

*Products*

6840 S.W. 92nd St., Miami, Fla. 33156

DATE: November 13, 2000 Our FAX number 305/ 667-3572

TO: Steel Hector & Davis

FAX#: 305-577-7001

ATTN: Norman Davis

PAGES: 4 Including cover sheet

Difficulty with FAX transmission, please phone 305/ 667-4051

Dear Norman:

Perhaps the fax that I sent to Eve Nolan of the National Geographic IMAGE SALES might be of some help to you on my soon to be finished affidavit.

Please find enclosed three different pages which might be of help to you.

- 1). Shows all of the major paperwork from March 17, 1996 (when we first discover & purchase the Educational Insights / NGS product to December 5, 1997, when we file our suit against Educational Insights, National Geographic Society & Mindscapes.
- 2). Shows a fax to Eve Nolan of NGS IMAGE SALES in regards to the Society going into the for-profit activity of becoming a photo agency and trying to market one of my images from the photographic assignment of the Summer of 1989. Please note the date on this fax being August 29, 1996, (a full year before the NGS 108 year CD ROM is available to the public. Also note my statement of.....

"You should know that most of my work is copyrighted my me."

- 3). Shows your certified letter to Suzanne Ross McDowell of April 23, 1997, advising them that I have become aware that the Society is embarked on a CD-ROM project, You state very clearly that.....

"The Society has no right-- under copyright contract, or any other theory-- to use Mr. Greenberg's creative works for purposes other than those that were authorized by him with respect to particular issues of the magazine.

When you send the finished affidavit to me by courier, you might want to select a firm that has a driver who is also a Notary Public.

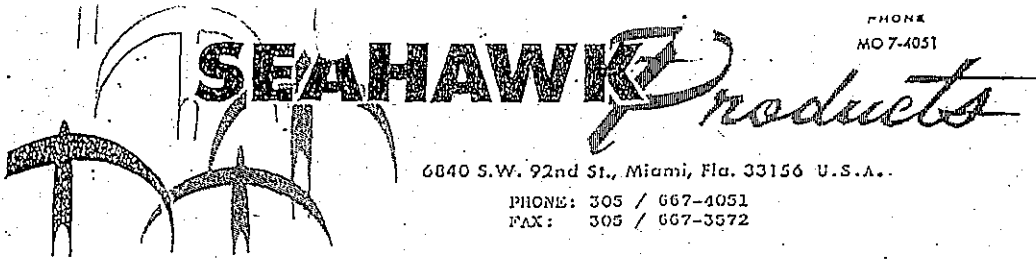
Sincerely yours, *JERRY GREENBERG* Jerry Greenberg  
SEAHAWK PRESS

# NATIONAL GEOGRAPHIC

MARCH, 1995  
DEC., 1997

- MARCH 17, 1996 WE DISCOVER & PURCHASE E.I./NGS PRODUCT @ GET SMART
- JULY 16, 1996 1<sup>ST</sup> LETTER TO JAY CUTLER @ E.I.
- JULY 16, 1996 LORI WILSON (E.I.) TO NORMAN DAVIS
- SEPT. 30, 1996
- OCT. 3, 1996 LORI WILSON (E.I.) TO NORMAN DAVIS
- OCT. 11, 1996 NORMAN DAVIS TO LORI WILSON (E.I.)
- OCT. 28, 1996 G.R. CALCOTT (E.I.) TO SUZANNE ROSS  
McDOWELL @ NATIONAL GEOGRAPHIC SOCIETY  
"AGREEMENT E.I. & NGS APRIL 5, 1995"
- NOV. 18, 1996 SUZANNE ROSS McDOWELL (NGS) TO N.D.  
"ALL FISH OF SAME SPECIES"
- DEC. 19, 1996 N. DAVIS TO SUZANNE ROSS McDOWELL (NGS)
- JAN. 16, 1996 N. DAVIS TO SUZANNE ROSS McDOWELL (NGS)
- FEB. 28, 1997 SUZANNE R. McDOWELL (NGS) TO N. DAVIS  
"WE ARE PREPARED TO DEFEND"
- MARCH 13, 1997 N. DAVIS TO SUZANNE R. McDOWELL (NGS) <sup>7 PGS</sup> A+B  
SETTLEMENT - 7 PAGES
- APRIL 18, 1997 SUZANNE R. McDOWELL (NGS) TO N. DAVIS  
SETTLEMENT
- APRIL 23, 1997 N. DAVIS TO SUZANNE R. McDOWELL (NGS)  
(ALSO MENTIONS PROPOSED CD-ROM) SETTLEMENT NOT ACCEPTABLE
- DEC. 5, 1997 N. DAVIS FILES AGAINST NGS & MINDSCAPE  
CASE 97-3924 CIV.





PHONE  
MO 7-4051

6840 S.W. 92nd St., Miami, Fla. 33156 U.S.A..

PHONE: 305 / 667-4051  
FAX: 305 / 667-3572

FAX: 1-202-429-5776

TO: Ms. Eve Nolan / IMAGE SALES  
National Geographic Image Collection  
Washington, DC 20036

DATE August 29, 1996

Dear Ms Nolan:

This is a follow-up of our discussion that began in February 29, 1996 concerning the marketing of my "Reference Select" (NGS ID RFP105F32, my ID-5783-074).

I trust you will recall and note that I stated in February and now state again that I declined and still decline permission for the Society to act as my photo agent.

On June 14, 1989 I signed an agreement with Kent Kobersteen for the Pennecamp Reef Park story #05738. It stated in Paragraph 5 (a-iii) that NGS may take and retain, in its illustrations libraries, copies of some of the photographs as "Reference Selects" only.

On November 16, 1989, I asked for clarification of what "Reference Selects" meant. Mr. Kobersteen advised me that the "Illustrations Library is often a first source for photographs for numerous Society publications. "Reference Selects" means to me what Mr. Kobersteen told me it meant to him.

NGS was not then in the photo agency business. Had I known the Society had plans to go into that business, I never would have accepted those terms.

Formerly, the Society forwarded outside queries directly to me. We have no agreement beyond that. The Society cannot alter the terms of our agreement unilaterally. It is NOT acceptable to me for the Society to act as my photo agent and to offer my material to outside clients.

It will be mutually beneficial at this time to review which of my photographs are in your Permanent Collection, in the Illustrations Library and in the NGS Image Collection. Your should know that most of my work is copyrighted by me. In order to avoid costly mistakes where my work appeared in print against my wishes and in violation of my copyrights, I believe the Society should take steps now to protect its own interests as well as mine. I want an inventory of any and all images made by me that are held by the National Geographic in any form, including originals, duplicates, digital files, electronic products, etc.

Sincerely yours,

Jerry Greenberg  
SEAHAWK PRESS  
6840 SW 92nd Street  
Miami, Florida 33156

BY CERTIFIED MAIL

April 23, 1997

Suzanne Ross McDowell  
Assistant Vice President  
Legal Affairs, Publications  
National Geographic Society  
1145 17th Street, N.W.  
Washington, D.C. 20036-4688

Dear Ms. McDowell:

This will acknowledge receipt of your letter dated April 18, 1997, which responded to our letter to you dated March 13, 1997. Your conclusion that no infringement has occurred with respect to the Educational Insights materials appears to foreclose any possibility of resolving that dispute without litigation. Your proposal to pay Mr. Greenberg \$500 for the use of his sea fan photograph was unacceptable when first made and is unacceptable now. Mr. Greenberg has serious concerns in other areas, as indicated in our letter, but is interested only in a global resolution of all matters covered in the letter.

We will proceed as indicated in the March 13 letter, and in any action that is brought in the Southern District of Florida we expect to name Educational Insights, Inc. as an additional defendant. The nature of a purported licensing agreement between that company and the Society as to the disputed materials is unclear to us, but in any event such an agreement is external to our client's interests.

Mr. Greenberg has become aware that the Society is embarked on a project that apparently will reproduce on one or more CD-ROMs, for distribution and sale, past issues of the Society's magazine covering 100 years. This is notice that any photographs provided by Mr. Greenberg to the Society which appeared in past issues of the magazine -- for which Mr. Greenberg owns exclusive copyright or for which Mr. Greenberg authorized one-time use for a single issue -- may not be used for the CD-ROM project, or any other project, without his prior written permission. The Society has no right -- under copyright, contract, or any other theory -- to use Mr. Greenberg's creative works for purposes other than those that were authorized by him with respect to particular issues of the magazine. In view of this notice, Mr. Greenberg will regard any unauthorized use of his works in the CD-ROM project as willful infringement, and he will seek the fullest remedies available to him.

In view of the impasse in the matter, please return to the undersigned the exhibit book that was specially prepared and provided to you for negotiation purposes. As stated in our March 13 letter, that exhibit was and is the property of Mr. Greenberg.

Your courteous response to our March 13 letter, while seriously deficient, in our view, in its discussion of applicable law, is appreciated. It is unfortunate that the Society -- zealously

DRAFT

# NORMAN DAVIS 6-PAGES CONFIDENTIAL!

ASSIGNMENTS UNDER THE 1909 COPYRIGHT ACT ( ALSO OTHER TRANSACTIONS) page #1



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NORMAN  
DAVIS

4 - SHEETS INCLUDING  
THIS COVER ITEM

# SEAHAWK

*Products*

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Sincerely yours,

Jerry Greenberg  
SEAHAWK PRESS  
6840 SW 92nd Street  
Miami, Florida 33156

# National Geographic Society

WASHINGTON, D. C. 20036

DATE: 2.29.92

NO. OF PAGES (INCLUDING COVER PAGE): 2

TO: Jerry Greenberg

NATIONAL  
GEOGRAPHIC  
SOCIETY

COMPANY: \_\_\_\_\_

EVE NOLAN  
Image Sales  
NGS IMAGE COLLECTION

DEPT.: \_\_\_\_\_

1145 17th Street N.W., Washington, D.C. 20036-4688, U.S.A.  
Telephone: (202) 857-7537 Fax: (202) 429-5776

FROM: EVE NOLAN

DEPT.: IMAGE COLLECTION AND IMAGE SALES


NATIONAL GEOGRAPHIC SOCIETY  
1145 17th Street, NW  
Washington, D.C. 20036

TELEPHONE: 202-857-7575

FAX NO.: 202-429-5776

\*\*\*\*\*

REMARKS:

Hello - Thank you for returning my call so promptly. We would like to include this file select for possible use in a pharmaceutical company annual report. Thank you for your attention to this matter. Sincerely,  


Geographic Location: JOHN PENNEKAMP CORAL REEF STATE PARK/KEY LARGO  
NATIONAL MARINE SANCTUARY, IN THE ATLANTIC OCEAN OFF  
KEY LARGO, FLORIDA.

Subjects: WARD, FRED  
ATLANTIC OCEAN  
UNDERWATER REFUGES AND RESERVES  
DIVERS AND DIVING  
ECOSYSTEMS  
INBOARD MOTORBOATS  
PHOTOGRAPHERS  
SARGASSUM PLANTS  
SARGASSUM SP.  
MOLASSES REEF  
GRECIAN ROCKS REEF

Summary: CORAL REEFS TAKE CENTURIES TO GROW, AND ONLY YEARS TO  
DIE. POLLUTION, CONSTRUCTION, AND CARELESS BOATERS,  
DIVERS, AND FISHERMEN THREATEN THEIR SURVIVAL. THIS  
PROJECT SHOWS THIRTY YEARS' DETERIORATION OF THE  
REEFS IN A PARK CREATED TO PRESERVE THEM.

Legend: A diver, probably Fred Ward, surfaces under sargassum  
weed over Molasses Reef or Grecian Rocks Reef. The  
boat is most likely the one he and Jerry Greenberg  
used to photograph this story.

Submitter: GREENBERG, JERRY

Medium(s): 35MM-SD

Received Date: 07/89 - 08/89

Submitted for Project Title: PENNEKAMP REEF PARK

Submitted for Product Type: NGM

Selected for Project Title: PENNEKAMP REEF PARK

Selected for Product Type: NGM

Project #: 05738

Picture Id: RFP105F32

Consecutive #: 74

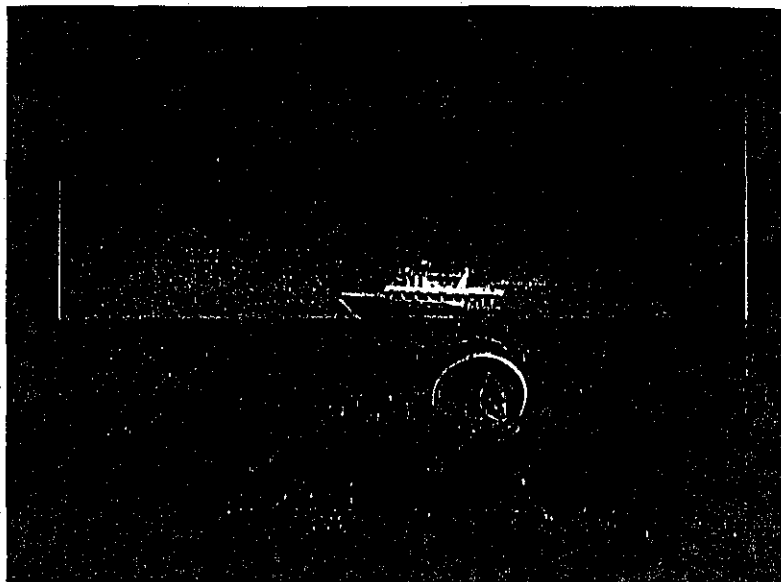
Accession Date: 1995 325

Photographer's Status: N

Published Flag: N

Picture Orientation: H

Color Indicator: C



2 8 1/2 x 11  
Greenberg



IMPORTANT

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