

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEGGY DENNIS, ET AL,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION,
ET AL.,

Defendants

Civil Action No. 83-1422

RECEIVED

JUL 19 1983

JAMES F. DAVEY, Clerk

MOTION FOR WAIVER OF SEARCH FEES AND COPYING COSTS

Come now the plaintiffs, Peggy Dennis and Eugene Dennis Vrana, and move the Court, pursuant to 5 U.S.C. § 552(a)(4)(A), for an order directing defendants to waive all search fees and copying costs for records which plaintiffs requested from the Federal Bureau of Investigation ("FBI") by letter dated October 22, 1982 (Appendix A hereto).

In support of their motion, plaintiffs submit the affidavits of Peggy Dennis, Eugene Dennis Vrana and F. Gerald Ham which are contained in Appendix A.

A Memorandum of Points and Authorities and a proposed Order are also attached hereto.

Respectfully submitted,



EDWARD GREER
133 Mt. Auburn Street
Cambridge, Massachusetts 02138
Phone: (617) 354-3089

James H. Lesar

JAMES H. LESAR
1231 Fourth Street, S.W.
Washington, D.C. 20024
Phone: (202) 484-6023
(703) 276-0404

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of July, 1983, hand-delivered a copy of the foregoing Motion for Waiver of Search Fees and Copying Costs to the office of Mr. David White, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar
JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEGGY DENNIS, ET AL., :
 :
 Plaintiffs, :
 :
 v. : Civil Action No. 83-1422
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 ET AL., :
 :
 Defendants :

O R D E R

Upon consideration of plaintiffs' motion for a waiver of search fees and copying costs for records they have requested from the Federal Bureau of Investigation, defendants opposition thereto, and the entire record herein, the Court finds:

1. That furnishing plaintiffs the information they have requested can be considered as primarily benefiting the general public; and

2. That defendants failure to grant plaintiffs a waiver of all search fees and copying costs for records they have requested from the Federal Bureau of Investigation was arbitrary, capricious, and an abuse of discretion;

Accordingly, it is by the Court this _____ day of _____, 1983, hereby

ORDERED, that plaintiffs' motion be, and the same hereby is GRANTED; and it is further

ORDERED, that defendants are directed to waive all search fees and copying costs for records which they requested from the Federal Bureau of Investigation by their letter of October 22, 1982.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEGGY DENNIS, ET AL., :
 :
 Plaintiffs, :
 :
 v. : Civil Action No. 83-1422
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 ET AL., :
 :
 Defendants :

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS' MOTION FOR WAIVER OF
SEARCH FEES AND COPYING COSTS

Plaintiffs seek an order from this Court directing defendants Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI") to furnish without charge the documents which plaintiff requested under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a), by letter dated October 22, 1982. (A copy of plaintiff's request is attached hereto as Appendix A.) In support of this application, plaintiffs rely upon §552(a)(4)(A), which provides:

Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

The plaintiffs, Peggy Dennis and Eugene Dennis Vrana, are respectively the widow and son of the former General Secretary of the Communist Party, U.S.A., Eugene Dennis. They have requested the files of the various divisions of the Justice Department on

their family.^{1/} These files are voluminous. They include the period from the indictment of Eugene Dennis under the Alien Registration Act ("Smith Act"), 54 Stat. 670-1 (1940), in July, 1948, until his conviction was upheld in Dennis v. United States, 341 U.S. 494 (1951),^{2/} and his imprisonment until 1955 in the Federal Penitentiary in Atlanta, together with times prior to and after these events in connection with his various political activities.

On October 22, 1982, plaintiffs, through their attorney, made simultaneous original requests to various components of the Department of Justice for these files. Because the files are being sought in order to make them available to historical researchers, plaintiffs also requested a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A), which request was supported with appropriate affidavits.

No fee waiver having been granted, plaintiffs filed an administrative appeal by letter dated December 8, 1982. (Plaintiffs' administrative appeal is reproduced as Appendix B hereto.) Pursuant to Department of Justice regulations, the administrative appeal with respect to both the Criminal Division and the FBI is centralized in the Office of Legal Policy.

1/ The extensive activities of Ms. Dennis as a Communist in this country and Comintern agent abroad are described in her book, Autobiography of an American Communist: A Personal View of a Political Life (1977)

2/ The Smith Act was effectively invalidated by Yates v. United States, 354 U.S. 298 (1957). Accord, Fujimoto v. United States, 251 F.2d 342 (9th Cir. 1958).

Thereafter, a fee waiver was granted with respect to the Criminal Division documents (see Complaint, ¶26; and Appendix C hereto), but refused as to the FBI documents (Complaint, ¶13). Having exhausted their administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C) and the Administrative Procedure Act, plaintiffs have proceeded to this Court for redress.

Plaintiffs contend that they are entitled to a waiver of fees with respect to the documents requested from defendant FBI on two independent grounds: (1) they are entitled to the fee waiver of right pursuant to § 552(a)(4)(A) and the failure to grant same is arbitrary and capricious; and (2) the simultaneously inconsistent decisions between the Criminal and FBI components of the Department of Justice ("DOJ") constitutes inconsistent agency action prohibited by the Administrative Procedure Act, 5 U.S.C. § 701, et seq. and the requirement of Due Process under the Constitution of the United States.

In support of their fee waiver request, plaintiffs submitted three affidavits as part of their original request letter. These affidavits were incorporated into the Complaint at Appendix A thereto (and are again reproduced as Appendix A to this motion). These affidavits stand uncontested. The affidavits of the two plaintiffs are essentially identical and indicate that the requesters "do not have the personal funds" to pay for the documents and that the documents are sought for "exclusively public and

historical research purposes." In particular, all documents obtained pursuant to FOIA:

will be donated directly upon receipt to the State Historical Society of Wisconsin. The complete Eugene and Peggy Dennis Collection of personal and political materials, files and papers are now posited (sic) in the Social Action Archives of the Wisconsin Historical Society. All papers and materials received under this Freedom of Information Act request will be immediately added to that Dennis Collection.

All of these documents will be made available without restriction, as are those within the current Dennis Collection now in the Archives of the Historical Society, to scholars for purposes of historical research, as part of the massive documentations which the Society has compiled since the turn of the century on American social activism and trade unionism.

Affidavit of Peggy Dennis, executed September 2, 1983.

Plaintiffs also submitted an affidavit by F. Gerald Ham, Acting Associate Director of the State Historical Society of Wisconsin. This affidavit, in addition to describing the Society's Social Action Collection (of which Dr. Ham is the chief administrator), supports the request for a fee waiver on two specific grounds:

First, Dr. Ham discusses the existent Dennis Collection at the archives and states that since their deposit:

there has already been considerable scholarly interest in and use of them by PhD candidates and university faculty affiliated both with the University of Wisconsin and other institutions. These researchers have used or are intending to use the papers for such diverse topics as the history of socialist education and the Milwaukee labor movement in the 1930's and 1940's.

Second, he indicates that by adding to that archive the materials which are the subject matter of the instant case, its effect would be to:

greatly increase the value of this particular archive for historical and scholarly purposes. I would also expect that this addition would result in an increase in the overall scholarly use of this collection.

October 1, 1982 affidavit of F. Gerald Ham.

Upon this showing by plaintiff, the Criminal Division of the Justice Department voluntarily waived fees in accordance with 5 U.S.C. § 552(a)(4)(A). Defendant FBI refused to do so. After this lawsuit was filed, however, the FBI decided to reduce its fee for its Headquarters files by the nominal amount of ten percent.^{3/} (The FBI's June 29, 1983 letter granting the ten percent reduction in fees is attached hereto as Appendix D.) As of this date, no waiver or reduction of fees has been made with respect to the FBI's field office files.

^{3/} In Lybarger v. Cardwell, 438 F. Supp. 1075 (D.Mass. 1977), aff'd 577 F.2d 764, 765 n. 2 (1st Cir. 1978), a partial fee waiver was upheld. In that case, however, the agency had demonstrated its good faith by voluntarily granting a fee waiver of 70-75% prior to the bringing of the suit, and the trial court made an explicit finding of this good faith effort. 438 F. Supp. at 1076. Additionally, there was a question as to whether the request was encompassed by the relevant Social Security regulation, 20 C.F.R. § 422.440(b). 577 F.2d at 766-767. In the instant case, in contrast, the relevant regulation, 28 C.F.R. § 16.9(a) simply tracks the statutory language; there is, therefore, no issue of judicial deference to an agency's interpretation of its own regulations.

ARGUMENT

I. UNDER 5 U.S.C. § 552(a)(4)(A), PLAINTIFFS ARE ENTITLED TO BE FURNISHED ALL DOCUMENTS COVERED BY THEIR REQUEST WITHOUT CHARGE

A. Congress Intended For Reputable Scholars Carrying on Serious Research About Significant Events in American History--As Is the Case Here--To Be Furnished Documents Without Charge

As the Court of Appeals for the First Circuit has recently recognized, quoting the Supreme Court's decision in GTE Sylvania, Inc. v. Consumers Union of U.S., Inc., 445 U.S. 375, 385 (1980):

Act

The Freedom of Information/was intended "to establish a general philosophy of full agency disclosure," . . . and to close the "loopholes which allow agencies to deny legitimate information to the public. . . ." Crooker v. U.S. Department of Justice, 632 F.2d 916, 920 (1st. Cir. 1980)

The thrust of the law is to get information out to the public, especially information which concerns matters of significant public interest. Dept. of the Air Force v. Rose, 425 U.S. 352 (1976).

The public policy underlying the Freedom of Information Act "was principally . . . in opening administrative processes to the scrutiny of the press and the general public. . . . [And] to enable the public to have sufficient information in order to be able . . . to make intelligent, informed choices with respect to the nature, scope, and procedure of federal governmental activities." Renegotiation Board v. Bannerkraft Co., 415 U.S. 1, 17 (1974); GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375 (1980).

Thus the FOIA is a legislative implementation of the profound values of the First Amendment; and, in particular, its extension to the internal processes of government itself. See, inter alia, The New York Times v. Sullivan, 376 U.S. 254, 270 (1974). (First Amendment embodies "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open.")

Unfortunately, cost under the initial statute did prove to be a significant barrier to the full use of the law by journalists, scholars, non-profit public interest organizations, and other non-commercial users who can best fulfill this central purpose of the Act. As a 1972 Congressional report on practices under the original FOIA found, excessive fee charges had become "an effective bureaucratic tool in denying information" to such requesters. (House Committee on Government Operations, Administration of the Freedom of Information Act, H. Rept. No. 92-1419, 92d Cong., 2d Sess., pp. 8-10 (1972), quoted in Subcomm. on Admin. Practice & Procedure of the Senate Judiciary Comm., "Agency Implementation of the 1974 Amendments to the Freedom of Information Act: Report on Oversight Hearings," 95th Cong., 2d Sess., p. 13 (Comm. Print 1980).^{4/} As a result, corporations and private law firms were

^{4/} Hereafter cited as 1980 Oversight Hearings Report.

making far more use of the FOIA than were public-interest groups.^{5/}

The law was therefore amended by Congress to attempt to overcome this problem. The fee waiver provision in 5 U.S.C. § 552 (a) (4) (A) was included in the 1974 amendments to the FOIA because of Congressional concern over the "real possibility that search and copying fees may be used by an agency to effectively deny public access to public records." S. Rep. No. 93-854, 93d Cong., 2d Sess. 11 (1974); Department of Air Force v. Rose, 425 U.S. 352, 361 (1976). The objective of the 1974 amendments was to strengthen the disclosure purposes of FOIA. Jordan v. United States, 591 F. 2d 753 (D.C.Cir. 1978).

As the district court recognized in Eudey v. Central Intelligence Agency, 478 F. Supp. 1175 (D.D.C. 1979)--a case where, as here, documents were sought under FOIA for scholarly research purposes and plaintiff moved for summary judgment on her right to a fee waiver under § 552(a) (4) (A):

Congress intended that the public interest standard [in § 552(a) (4) (A)] be liberally construed, see Rep. No. 93-854, 93d Cong., 2d Sess. 12 (1974) and that fees not be used as an obstacle to disclosure of the requested information. See

^{5/} See 1980 Oversight Hearings Report 47-49; John E. Bonine, "Public Interest Fee Waivers Under the Freedom of Information Act," 1981 Duke L.J. 213, 214-215 (hereafter cited as Bonine, "Public Interest Fee Waivers"). As Professor Bonine noted, at p. 214, n. 3, one government survey of practices under the original act indicated that there were "three times as many requests from corporations and private law firms as from the news media, public-interest groups, and researchers." The use of the FOIA for business purposes has continued to rise. Id. at 216.

Conf. Rep. No. 93-1200, 93d Cong., 2d
Sess. (1974), reprinted in [1974]
U.S. Code Cong. & Ad. News at 6287.^{6/}

Further guidance in discerning the Congressional intent behind the fee waiver provision can be found in three post-amendment documents: the 1980 Senate subcommittee report on the 1977 oversight hearings on the 1974 amendments to the FOIA (the "1980 Oversight Hearings Report"); a report on public-interest fee waiver policy prepared for the Administrative Conference of the United States by John E. Bonine, an associate professor of law at the University of Oregon (Bonine, "Public Interest Fee Waivers");^{7/} and a 1981 memorandum from Attorney General Benjamin R. Civiletti devoted to fee-waiver policy.

All three of these documents unequivocally point to the same conclusion: that Congress intended that where serious research on a significant event in American history by scholars is involved, fee waivers should be granted.

The 1980 Senate Subcommittee report referred to above was based primarily on the record of four days of FOIA oversight hearings conducted in the fall of 1977 by the Judiciary Committee's Administrative Practice and Procedure Subcommittee supplemented

^{6/} In the Eudey case, to be discussed further infra, the court granted summary judgment for plaintiff.

^{7/} This work, cited earlier (p. 8, n. 5) to the Duke Law Journal, is described in that journal as "based on a report prepared for the Administrative Conference of the United States (emphasis added). Ms. Sue Boley, the Information Officer for the Administrative Conference, indicated in a telephone conversation on February 1, 1983 that the Duke Law Journal article and the actual report submitted to the Conference are the same in all material respects.

by case law, casework, literature, and GAO and Library of Congress studies on FOIA administration. The goal of these hearings, as Chairman Abourezk put it, was "to ensure congressional intent [regarding FOIA] is being carried out." 1980 Oversight Hearings Report at 1. But despite passage of § 552(a)(4)(A), the subcommittee staff found that "excessive fee charges . . . and refusal to waive fees in the public interest remain . . . 'toll gate[s]' on the public access road to information" and that "the potential for abuse of agency discretion over FOIA fees remains high." *Id.* at 8/
78.

Perhaps most significant for the purpose of the present motion, the subcommittee report noted that "[c]asework also has revealed particular fee problems concerning scholars and news media representatives," *id.* at 78, n. 45. The report concluded

8/ The 1980 Oversight Report bluntly concluded that "the agencies, relying on the general language of the statute . . ., have applied a wide variety of criteria, many clearly improper or questionable" in making fee waiver decisions. *Id.* at 83. Improper denial of fee waiver requests is evidently a mechanism which undermines the implementation of the FOIA's objectives.

Unfortunately, the Justice Department maintains no statistics on fee waivers. "Therefore, there is no way to determine how often fees are waived because of public benefit, indigency, or insignificance of the amount that would be collected, nor is there any way to determine the cost of current fee waiver policies." (Justice Management Division, U.S. Department of Justice, Evaluation of the Department of Justice Management of the Freedom of Information and Privacy Acts (October, 1980), 67-68.) To the same effect, see Recommendation No. 81-1 of the Administrative Conference of the United States, 46 FR 62, 805 (December 29, 1981): "4. Congress should consider collecting accurate and uniform data on the cost of the Freedom of Information Act, since existing data is unreliable."

that "[m]ost agencies have also been too restrictive with regard to granting fee waivers for the indigent, news media, scholars. . . ." Id. at 90. It was specifically recommended that uniform guidelines to deal with these fee waiver problems be developed by the Department of Justice, and that:

The guidelines should recommend that each agency authorize as part of its FOIA regulations fee waivers for the indigent, the news media, researchers, scholars, and non-profit public interest groups. The guidelines should note that the presumption should be that requesters in these categories are entitled to fee waivers, especially if the requesters will publish the information or otherwise make it available to the general public.

Id. at 96. (Emphasis added)

Professor Bonine's report for the Administrative Conference, like the oversight hearings, had the goal of comparing agencies' implementation of the fee-waiver provision with the Congressional intent behind that amendment. Bonine, "Public Interest Fee Waivers," at 217. Bonine's very careful and detailed analysis of the legislative history of the fee-waiver provision demonstrates that the Senate^{9/} relied primarily on five sources in shaping that provision: (1) prior law on charges for government services, (2) a 1971 study of the FOIA prepared for the Administrative Conference, (3) a 1972 House report on the implementation of the FOIA, (4) existing agency regulations on fee waivers, and (5) the "public benefit" concept as applied to attorneys' fees. Id. at 239. Professor Bonine's

^{9/} The fee-waiver provision originated in the Senate bill; no such provision was in the original House bill.

analysis of these sources ^{10/} reveals that all of them support the conclusions that "nonprofit activities and educational or scholarly work were among the types of requests the Senate had in mind when it drafted the public-benefit test." Id. at 243. Indeed, Professor Bonine concludes that:

The purpose and legislative history of the Freedom of Information Act point to two groups of requesters whose fees should generally be waived. The first group consists of journalists, scholars and authors. These persons confer a public benefit by disseminating information to others, thereby multiplying the benefit obtained from a single release of documents.

Id. at 260. For this group, Professor Bonine recommends, documents shall be furnished free of charge "unless the agency determines that the requester's purpose is commercial, financial, or clearly frivolous." Id. at 264. ^{11/}

Moreover, the Attorney General, who as head of the Department of Justice is charged with overall responsibility to ensure proper implementation of the FOIA by the agencies, himself agreed with these views of the Congressional intent regarding fee waivers. In a January 5, 1981 Memorandum to all department and agency heads, the then-Attorney General stated that he has "concluded that the Federal Government often fails to grant fee waivers under the Free-

^{10/} To avoid unnecessary repetition, the details of Professor Bonine's analysis will not be repeated here. Plaintiffs urge the Court to consult his article directly if further evidence in support of his conclusions is desired.

^{11/} Following the submission of Professor Bonine's report, the Administrative Conference did issue certain recommendations concerning fees under the FOIA. 1 C.F.R. § 305.81-1 (1981). These recommendations specifically urged Congress to retain the fee waiver provision in § 552(a)(4)(A).

dom of Information Act when requesters have demonstrated that sufficient public interest exists to support such waivers," and reminds the agency heads that "Congress clearly intended that this discretion [to grant fee waivers] to be exercised generously . . ." The Attorney General then went on to state that:

Examples of requesters who should ordinarily receive consideration for partial fee waivers, at minimum, would be representatives of the news media or public interest organizations, and historical researchers. Such waivers should extend to both search and copying fees, and in appropriate cases, complete rather than partial waivers should be granted.^{12/}

The courts have also recognized that documents must be furnished free of charge whenever the public benefit criterion is met, and that agency refusal to grant fee waivers in such cases is an abuse of discretion.^{13/} See Allen v. FBI, 551 F. Supp. 694 (D.D.C. 1982); Diamond v. FBI, 548 F. Supp. 1158 (S.D.N.Y. 1982); Wooden v. Office of Juvenile Justice Assistance, Research & Statistics, 2 GDS ¶81,122, Civil Action No. 80-2866 (D.D.C. March 20, 1981); Winslow v. Dept. of the Army, 3 GDS ¶82,331, No. 79-2960-Civ-JE (S.D.Fla. January 30, 1981); Eudey v. CIA, supra; Fellner v. U.S. Dept. of Justice, No. 75-C-430 (W.D.Wis. April 28, 1976); Fitzgibbon v. CIA, No. 76-700 (D.D.C. January 10, 1977).

^{12/} January 5, 1981 Memorandum to: HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES FROM: Benjamin R. Civiletti, Attorney General, reproduced in GDS, ¶300,793 (emphasis added).

^{13/} It must be remembered that the statutory language regarding fee waivers is mandatory, not permissive: "Documents shall be furnished free of charge or at a reduced charge. . . ." 5 U.S.C. § 552(a)(4)(A) (emphasis added).

In Diamond v. FBI, for example, the court ordered the defendant agency to waive fees for a Columbia University professor of sociology and history who was seeking documents "relating to government surveillance of academicians, including himself, during the McCarthy era" (Diamond v. FBI, 532 F. Supp. 216, 219 (S.D.N.Y. 1981), noting that the requester's planned use of the information for scholarly lectures and articles would benefit the public. The court concluded after reviewing the case law on fee waiver, with a statement directly relevant to the motion at issue here, that:

Courts seem most willing to overrule agency fee determinations in cases in which authors sought information to further their research into topics of historical interest.

Other such cases include Eudey, Fellner v. U.S. Dept. of Justice and Fitzgibbon v. CIA, supra. In Eudey, the plaintiff was a historian and research associate at the University of California at Berkeley who sought documents concerning relations between the United States and Italian and French trade unions during the post-World War II period. Although the CIA conceded that this research topic was of public interest, it denied plaintiff's request for a fee waiver on the ground that very little useful information would in fact be released as a result of the FOIA request. The court found this consideration impermissible under the Act, pointing out that the key question was not how many documents would be released, but rather who would primarily benefit from the release: the general public or the individual requester? Only if the agency could

show that the benefit would flow primarily to the individual rather than to the public could a fee waiver denial be upheld as not arbitrary and capricious. 478 F. Supp. 1175.

Similarly, in Fellner, the court ruled that an FBI denial of a fee waiver to a journalist who sought information concerning FBI surveillance of political activity in Madison, Wisconsin on the ground that an "overriding public interest" had not been convincingly established^{14/} was not in accord with the statutory requirement. And in Fitzgibbon, the court held that the agency had failed to show that the documents sought by a journalist and historian investigating the murder of Jesus de Galindez by agents of the Trujillo regime were not "of interest to the general public, in an historical sense at least" (slip op. at 2).

In the instant case, were it is facially established that the information sought concerns a topic of great national significance and that the requesters will effectively disseminate this information to the general public through the appropriate archive, there can be no rational basis whatsoever for upholding the agency's denial of a fee waiver.

The cases of which plaintiffs are aware which uphold agency fee denials are entirely different in content from the instant case.

^{14/} In that case, the Deputy Attorney General's explanation of the fee waiver denial noted that a fee waiver was inappropriate because the request concerned only "local" (i.e., Madison, Wisconsin) significance. He contrasted this with the Meeropol (or Rosenberg atom spy) case, in which he had "personally waived a large search fee" because "that case involved sustained, national public interest and possibly unique historical significance." Fellner v. U.S. Dept. of Justice, supra, slip op. at 3. Plaintiffs submit that the Smith Act trials are, like the Rosenberg case, a matter of sustained national public interest and particular historical significance.

The vast majority concern requests from indigent federal prisoners for records relating to their own cases, where there is facially no public benefit to be served by filling the request, e.g., Harbott v. Canales, 3 GDS ¶83,028, Civil Action No. H-78-1958 (S.D.Tex. 11/12/82); Rizzo v. Tyler, 438 F. Supp. 895 (S.D.N.Y. 1977). Courts have also upheld fee waiver denials where information is already in the public domain (see Shaw v. CIA, 3 GDS ¶83,009 (D.D.C. 10/27/82) and Blakey v. Dept. of Justice, 549 F. Supp. 362 (D.D.C. 1982)) and where there was no evidence--as there is here--that the information would ever be disseminated to the public. Burriss v. CIA, 524 F. Supp. 448 (M.D.Tenn. 1981).

And, indeed, even the government eschews any contention to the effect that it has unreviewable and untrammelled discretion over fee waivers. It concedes that the decision over whether to waive fees is subject to judicial review under the "arbitrary and capricious" standard, and does not claim that this is left to unreviewable agency discretion. Absent a clear expression of Congressional intent otherwise, administrative agency actions are subject to judicial review. Dunlop v. Bachowski, 421 U.S. 560, 567 (1974); Barlow v. Collins, 397 U.S. 159, 166 (1970); Abbott Laboratories v. Garder, 387 U.S. 136, 141 (1967).

B. Neither Voluminousness Nor Costliness of the Information Requested Is a Legitimate Factor Upon Which to Predicate Denial of a Fee Waiver Request If the Information "Can Be Considered As Primarily Benefiting the General Public"

If--as here--a request for information meets the statutory requirement of "primarily benefiting the general public" both be-

cause of the legitimate scholarly purposes of the requesters and because of the unique historical significance of the information sought, then a fee waiver must be granted. In such a case, the voluminousness of the documents to be released and the consequent cost of searching for and/or reproducing them may not be considered as militating against a fee waiver.

The 1980 Oversight Hearings report, discussed above, specifically notes that the rationale sometimes proffered by agencies that a request is "too broad or voluminous to justify a fee waiver" is not an appropriate one, particularly when used by the agency to force a requester to scale down a request." Report at 90 and n. 81. As the court said in Mobil Oil Corp. v. FTC, 406 F. Supp. 305, 312 (S.D.N.Y. 1976):

Although we recognize that a request for documents of the magnitude here saddles an agency with a substantial, time-consuming task, adherence to the FOIA's scheme requires that the job be done.

The Attorney General himself reminded agencies that "such impermissible consideration as the quantity of material likely to be released . . . would have no place in a fee waiver policy." January 5, 1981 Memorandum, supra.

Nor is cost an appropriate factor to consider. First of all, although overall FOIA costs are significantly higher than Congress originally anticipated (as often occurs with legislation), they are still miniscule when compared, for instance, with the amounts spent on public relations by the executive branch. 1980 Oversight Hear-

ings Report at 59, n. 99. Even more important for the present purposes, requests which even ask for, let alone receive, fee waivers are but a drop in the ocean of commercial requests.

According to the Bonine report, less than two percent of all FOIA requests even allege a benefit to the general public which would entitle them to a fee waiver. Bonine, "Public Interest Fee Waivers," at 216. Since agencies can only charge direct costs and not overhead even to commercial users, they are actually losing money on non-fee-waived requests.^{15/} Nonetheless, the subcommittee oversight report specifically cautions that "agencies should not refuse to waive fees for the indigent, the media, scholars and non-profit groups in order to recoup their costs due to excessive business use of the Act." 1980 Oversight Hearings Report at 52, n. 63.

Moreover, the legislative history of the FOIA makes clear that cost to the agencies was not the focus of concern, and that Congress intended that "with the provisions for waiver and reduction of fees, it is not necessary that FOIA services performed by agencies be self-sustaining." S. Rep. No. 854, 93rd Cong., 2d Sess. 11 (1974), quoted in Bonine, "Public Interest Fee Waivers," at 251. Congress decided that disclosure and open government were worth the price.

There has been recognition by the courts that agencies may not rely on cost as a reason for failing to properly fill FOIA

^{15/} In 1982 the FBI incurred costs of \$12 million in processing FOIA requests but recouped only \$30,209 from fees. Asbury Park Press, April 3, 1983, A4.

requests. In Fitzgibbon v. CIA, supra, for example, the Court noted that the defendant agency "feels an obligation to the public to collect fees for processing Freedom of Information requests. Any such perceived obligation," the Court ruled, "is irrelevant to the purposes of § 552(a)(4)(A)," slip op. at 2. Similarly, in Diamond v. FBI, supra, the Court stated that "[i]n so far as the agency's determination [to deny fee waiver] was based on the risk to the public fisc . . ., it was based on a factor 'not controlling under the terms of the statute' and was, therefore, arbitrary and capricious." 548 F. Supp. at 1160.

In Long v. IRS, 596 F.2d 362, 367 (9th Cir. 1979), cert. denied, 446 U.S. 917 (1980), the IRS claimed that the cost of deleting identifying information from certain documents would be so high that these documents should not be released, but the Court pointed out that Congress "intended" that the agencies would bear substantial costs in processing FOIA requests. "Whether such expenditures are good policy is not a question for us to decide. Congress has determined that access to government records is an important objective."

In the present case, the defendants have not specifically relied on either voluminousness or cost as a basis for the fee waiver denial. The decision of the FBI--after suit was filed--to grant a nominal ten percent (10%) reduction in fees, however, gives rise to an inference that the agency decided, contrary to Congressional policy, that there should only be so much free information and no more.

But either a request will "primarily benefit the general public" or it will not. If, as here, it does, then all of the documents requested should be furnished free of charge.

C. There Should Be No Deference to the Agency's Refusal to Grant the Fee Waiver Because It Has No Expertise on the Subject

In judicial review of administrative agency determinations, considerable deference to agency fact-finding is ordinarily appropriate because of the "capability of administrative agencies to draw specialized inferences based on their experience." Breyer and Stewart, Administrative Law and Regulatory Policy (1979), 184; Public Citizen v. Foreman, 631 F.2d 969, 977 (D.C.Cir. 1980) (USDA approval of nitrites in curing bacon goes "beyond our competence, and we must defer to the administrative agencies with their technical expertise on these matters."); United States v. Rutherford, 442 U.S. 544, 553 (1979); Consolo v. FMC, 383 U.S. 607 (1966); NLRB v. Seven-Up Bottling Co., 344 U.S. 349 (1953); Board of Governors v. Agnew, 329 U.S. 441, 450 (1947) (concurrence by Rutledge, J. and Frankfurter, J.). But the comparative qualifications of the agency and court circumscribe this deference. Jaffe, Judicial Control of Administrative Action (1965), 579-585; Landis, The Administrative Process (1938), 152-155.

Thus where--as in the instant matter--the agency making the decision has no expertise whatsoever,^{16/} a reviewing court ought to give that decision only the most minimal deference, if any. (It should be noted that there are no issues of witness credibility or the like. This Court has as many or more facts at its disposal in evaluating the requesters' right to a fee waiver as did the FBI.) A fortiori, such is the case here where there is in effect an ex parte adjudicatory decision. See the dissent by Frankfurter, J. in FTC v. Motion Picture Advertising Service Co., 344 U.S. 392, 404 (1953); Davis, Administrative Law Treatise, § 30.08 (1976 Supplement).

Whether the standard of judicial review of the fee waiver is, as the Government contends, "arbitrary and capricious,"^{17/} or, as plaintiffs aver, "de novo,"^{18/} makes little difference practically.

^{16/} The FBI's expertise is in law enforcement and investigations, not historiography. No negative inferences as to the FBI officials' integrity or good faith efforts to apply the FOIA is implied by suggesting that they are attempting a task beyond their competence in segregating documents into piles of historically "significant" and "insignificant."

^{17/} See its now superseded "interpretive regulation" and Lybarger v. Cardwell, 438 F. Supp. 1075 (D. Mass. 1975).

^{18/} Rizzo v. Tyler, 438 F. Supp. 895 (S.D.N.Y. 1977) (FOIA fee waiver held subject to de novo review). And see: "Facts are 'subject to trial de novo by the reviewing court' when 'the [agency] action is adjudicatory in nature and the agency fact-finding procedures are inadequate.' Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 91 S. Ct. 84, 823, 28 L. Ed. 2d 136 (1971)." Porter v. Califano, 592 F. 2d 770, 782 (Fifth Cir. 1979).

On either standard (or an intermediary one such as the "substantial evidence" test), it is clear that the FBI's decision is plainly erroneous and unsupportable on any rational basis.^{19/}

Since this Court has the power to review the decision, Dialpulse Corp. of America v. FDA, 500 F.2d 75 (2nd Cir. 1974); American Mail Line, Ltd. v. Gulick, 441 F. 2d 696 (D.C.Cir. 1969), it has the authority to reverse it and require the waiver of fees.

D. For the University of Wisconsin Archive to Serve Its Public Historiographic Mission, Its Documentation Must Be As Complete As Feasible

There is no question that the indictment of 141 leaders of the American Communist Party then led by Eugene Dennis^{20/} is a central event of American post-World War II political history. From the initial indictment in July, 1948 through the upholding of

^{19/} Under any of these tests, plaintiffs are entitled to the benefit of searching inquiry into every aspect of the administrative agency's decision-making process and each factor considered by the FBI in its decision to refuse to waive fees. American Textile Mfrs. v. Donovan, 452 U.S. 490 (1981); Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971); Ethyl Corp. v. EPA, 541 F. 2d 1 (D.C.Cir. 1976); Portland Cement v. Ruckelshaus, 486 F.2d 375 (D.C.Cir. 1973); Assoc. Industries of New York State v. Dept. of Labor, 487 F.2d 342 (2d Cir. 1973, per J. Friendly).

^{20/} Twenty-eight, including Eugene Dennis, served substantial terms in prison under the Alien Registration Act (Smith Act), 18 U.S.C. § 2385; 79 others had convictions dismissed after the statute was effectively invalidated by Yates v. United States, 354 U.S. 298 (1957). Generally, see "The Supreme Court 1956 Term," 71 Harvard Law Review, 85, 123-126 (1957); Nathanson, "The Communist Trial and the Clear-and-Present-Danger Test," 63 Harvard Law Review 1167 (1950).

of the Smith Act's validity in Dennis, et al. v. United States, 341 U.S. 494 (1951), the activities of Mr. Dennis and his colleagues were front-page news. Scholarly and historical interest has continued unabated ever since--as evidenced, for example, by the usage of the Dennis Collection at the University of Wisconsin Historical Society. (See the affidavit of F. Gerald Ham.)^{21/}

Of necessity, research on the subject requires access to the relevant archival materials. Among the most important such files are those maintained by the defendant FBI, especially at its field offices. This point has been established by the detailed factual findings of Judge Harold Greene in American Friends Service Committee v. Webster, 485 F. Supp. 222 (D.D.C. 1980) (preliminary injunction granted to forbid FBI and National Archives from further destruction of FBI field office files because of their unique historical value.)

In that case it was established that primary and original investigative records, materials, notes, exhibits and other records (including informer source records and logs, transcripts, tapes, electronic and physical surveillance records, and statements of witnesses) are collected and retained solely by FBI field offices. Consequently, "the field office files on any particular subject typically exceed in volume those kept at headquarters by a ratio of

^{21/} Among the recent scholarly historical books on the subject Stanley Kutler, The American Inquisition: Justice and Injustice in the Cold War (1982) and Michel Belknap, Cold War Political Justice: The Smith Act, the Communist Party and American Civil Liberties (1977).

of four or five to one." Id. at 232. Therefore:

In a very real sense, insofar as historians and other investigators are concerned, the field office files would be the stuff of primary research, at least in the areas of how and why FBI investigations are conducted (as distinguished from the ultimate decisionmaking process).

Id.

This Court may take judicial notice that many of the most significant scholarly works on recent American history published over the past five years would have been impossible of achievement without documents produced pursuant to the FOIA. In particular, works involving the actions of executive agencies carrying out sensitive and vital policy decisions have been made possible by use of FOIA.

These books, whether or not flattering to the agency involved, clearly vindicate the Congressional purpose in the passage of the FOIA. (Its objective "was principally . . . in opening administrative processes to the scrutiny of the press and the general public . . . to enable the public to have sufficient information in order to be able . . . to make intelligent, informed choices with respect to the nature, scope, and procedure of federal governmental activities." Renegotiation Board v. Bannerkraft Co., 415 U.S. 1, 17 (1974).)

An example of them is Professor David J. Garrow's The FBI and Martin Luther King, Jr.: From "Solo" to Memphis, a work which would have been literally impossible of achievement without careful use of the relevant FBI files--in particular the various field of-

fice investigative files (whose most revealing components were not duplicated in Headquarters files).

Prior to the passage of the FOIA, historians utilized similar kinds of archival materials available at the National Archives of the General Services Administration. See, for instance, Professor William Preston, Jr.'s Aliens and Dissenters: Federal Repression of Radicals, 1903-1933 (Harvard University Press, 1963). ^{22/}

The use of the kinds of materials found in FBI field office files is now the standard historiographical practice throughout the world. To the extent that the agency and its officials who make fee waiver decisions believe that the mass of their documents are not useful for historical research, they only confirm their own lack of expertise when they venture outside the realm of criminal investigation.

The most important new historical works being produced by leading historians throughout the world--of which exemplars are Carlo Ginsburg, The Cheese and the Worms: The Cosmos of a Six-

^{22/} Professor Preston describes an example of a file which he used, Record Group 85, Immigration and Naturalization Service, 297: "The file may also include as evidence or rebuttal unsworn statements, hearsay, ex parte affidavits, personal letters, statements of informers, and unconfirmed opinions. The total record usually provides not only an objective report of why the arrest originated, that is what forces besides the service itself wanted the alien detained, but also an unconscious delineation of the inspector's and the bureau's own attitude in their reports and recommendations."

teenth Century Miller (English edition, 1980);^{23/} Emmanuel LeRoy Ladurie, Montaillou: The Promised Land of Error (English edition, 1978);^{24/} and E.P. Thompson, Whigs and Hunters: The Origin of the Black Act (1975)--draw upon archival sources of just the sort which the plaintiffs in this lawsuit are seeking.

Whigs and Hunters, for instance, is a history of the development and impact of an English statute, George 1, c. 22 (disguised persons killing deer deemed felons) known as the Black Act. Professor Thompson concludes this renowned book with a "Note on Sources" which begins as follows:

The character and possible limitations of this study can only be understood in the light of the sources employed, and the curious absences in these sources. . . . [The core of the government records are missing:] Essentially and in addition to the Crown briefs, indictments, depositions, etc.--all the central materials as to Black infiltration and surveillance. If it were not for the survival of Baptist Nunn's extraordinary expenses claim (among Treasury in-letters) we would not know of his activity in placing spies among the

^{23/} Professor Lawrence Stone, Director of Princeton University's Shelby Cullom David Center for Historical Studies (and perhaps our nation's leading authority on historiography) has described Ginsburg as a leading scholar long associated with the "new history" involved in searching for "new sources." These new sources are "often records of written transcripts of the full testimony of witnesses under interrogation and examination." The Past and the Present (1981), 91. Also see Ann J. Schulte, "Carlo Ginsburg," Journal of Modern History, 48, 296-315.

^{24/} A review of the latest work of this social historian in The New York Times (December 12, 1982) begins by pronouncing him "the foremost French historian of his generation." It goes on to summarize Montaillou as a "major contribution . . . which skillfully exploits the Inquisition register of Jacques Fournier, Bishop of Pamiers, to draw a portrait of life in a Pyrenean village during the early 14th century."

Blacks at all, nor of his regular contacts with
 . . . Walpole.

Whigs and Hunters, 295-296.

For the Dennis family archive to be of maximal value to historians, therefore, it must be as complete and comprehensive as possible.

E. The Simultaneously Inconsistent Decisions on Fee Waiver Between the Criminal Division and the FBI Requires Reversal of the FBI Decision

It is established law in this Circuit that an agency is not permitted to make simultaneously inconsistent decisions. Hatch v. Federal Energy Regulatory Commission, 654 F.2d 825 (D.C.Cir. 1981); Standard Rate and Data Service, Inc. v. United States Postal Service, 584 F.2d 473, 482 (D.C.Cir. 1978); Chem-Haulers, Inc. v. ICC, 557 F.2d 859 (D.C.Cir. 1977); Greyhound Corp. v. ICC, 551 F.2d 414, 416 (D.C.Cir. 1977) ("This court emphatically requires that administrative agencies adhere to their own precedents or explain any deviations from them."); Oil, Chemical & Atomic Workers Intl. Union v. NLRB, 547 F.2d 598 (D.C.Cir. 1976), cert. den., 429 U.S. 1078 (1977).^{25/} Accord, Morton v. Ruiz, 415 U.S. 199

^{25/} With the possible exception of the Second Circuit, this requirement of agency consistency is universal. See, for instance, Squaw Transit Co. v. United States, 574 F.2d 492, 495-496 (10th Cir. 1978); Niedert Motor Service, Inc. v. United States, 583 F.2d 954, 962 (7th Cir. 1978); Contractors Transport Corp. v. United States, 537 F.2d 1160, 1162 (4th Cir. 1976) ("Patently inconsistent applications of agency standards to similar situations lacks rationality and is arbi-

(footnote continued on following page)

(1974); Secretary of Agriculture v. United States, 347 U.S. 654 (1954).

And in this lawsuit, the fee waiver decisions of the Criminal Division (March 9, 1983) and the FBI (alternately calculated as ten days after receipt of plaintiffs' December 8, 1982 administrative appeal, or June 29, 1983, are effectively simultaneous. Defendants do not claim--and it would be entirely implausible if they did--that the Justice Department's standard for fee waiver of documents for historical research has been undergoing change during the period at issue.

Furthermore, there is simply no coherent policy or explanation for asserting that the Justice Department files on Eugene Dennis in the Criminal Division meet the FOIA statutory requirement

25/ (footnote continued for preceding page)

trary."); White v. Roughton, 530 F.2d 750 (7th Cir. 1976); Public Interest Research Group v. FCC, 522 F.2d 1060, 1065 (1st Cir. 1965), cert. den., 424 U.S. 965 (1976); Brennan v. Giles & Cotting, Inc., 504 F.2d 1255 (4th Cir. 1975); City of Lawrence v. CAB, 343 F.2d 583 (1st Cir. 1965).

The ambiguous line of decisions in the Second Circuit of which the seminal case is William N. Feinstein & Co. v. United States, 317 F.2d 509 (2d Cir. 1963), seem to turn on the right of agencies to change the bases of later decisions (Id., 512). Cf. Office of Communication of the Church of Christ v. FCC, 560 F.2d 529 (2d Cir. 1977) (departure from FCC precedents set aside for lack of explanation).

The scholarly commentators also favor the requirement of agency consistency as part of the larger process by which the federal judiciary checks administrative agency action which is contrary to law. See, for instance, Louis L. Jaffe, Judicial Control of Administrative Action (1965), 184; Note, "Violations by Agencies of Their Own Regulations," 87 Harvard Law Review, 629, 630 (1974); Davis, 1980 Supplement to Administrative Law Treatise, § 17.07.

for a fee waiver while those files in the FBI do not. (Indeed, as we have seen in Part D, supra, to the extent that historians make such hierarchical distinctions between documents, the current practice in the field is to give primacy to the kinds of raw surveillance reports, etc. maintained by the FBI.)

And any post-hoc effort to create such an explanation should be unavailing. See Camp v. Pitts, 411 U.S. 138 (1972). The March 9, 1983 Justice Department's Criminal Division fee waiver "carries its own death wound," NLRB v. Pittsburgh S.S. Co., 337 U.S. 656, 660 (1951), if the Justice Department now tries to justify its refusal to waive fees with respect to the FBI.

Respectfully submitted,

Edward Greer

EDWARD GREER
133 Mt. Auburn Street
Cambridge, Massachusetts 02138
Phone: (617) 354-3089

James H. Lesar

JAMES H. LESAR
1231 Fourth Street, S.W.
Washington, D.C. 20024
Phone: (202) 484-6023
(703) 276-9297

EDWARD H. GREER
ATTORNEY

APPENDIX "A"

133 MT. AUBURN STREET, CAMBRIDGE, MASS. 02138 (617) 354-3089

by Certified Mail

October 22, 1982

FREEDOM OF INFORMATION ACT REQUEST

Simultaneous Original Requests to:

Department of Justice
Bureau of Prisons
General Counsel
320 First Street N.W.
Washington, DC 20534

Federal Bureau of Investigation
Director, FBI
Attn: FOIA & Privacy Acts Branch
10th and Pennsylvania, N.W.
Washington, DC 20505

Federal Bureau of Investigation
New York Field Office
26 Federal Plaza
New York, NY 10278

Federal Bureau of Investigation
Wisconsin Field Office, Room 700
Federal Building & Courthouse
Milwaukee, WI 53202

Federal Bureau of Investigation
San Francisco Field Office
450 Golden Gate Avenue
San Francisco, CA 94102

FOIA/Privacy Unit
Office of Pardon Attorney
Department of Justice
Washington, DC 20530

FOIA/Privacy Unit
Office of Solicitor General
Department of Justice
Washington, DC 2053

FOIA/Privacy Unit
U.S. Parole Commission
Department of Justice
Washington, DC 20530

FOIA/Privacy Unit
Civil Division
Department of Justice
Washington, DC 20530

FOIA/Privacy Unit
Criminal Division
Department of Justice
Washington, DC 20530

FOIA/Privacy Unit
Executive Office for U.S. Attorneys
Department of Justice
Washington, DC 20530

Gentlemen:

I am the attorney representing the late Eugene Dennis (through his next-of-kin, surviving wife Peggy Dennis), Peggy Dennis and Eugene Dennis Vrana with respect to the instant requests under the Freedom of Information Act as amended,

5 U.S.C. Sec. 552. Please enter my appearance on their behalf and direct all future correspondence in the matter to myself at the above address. (Documents released pursuant to this request should be shipped directly to Peggy Dennis, 2020 Durant Avenue, Berkeley, California.) Attached as Appendix "A" and Appendix "B" respectively are copies of affidavits of Peggy Dennis and Eugene Dennis Vrana which authorize my representation.

I.

This request is for any and all files and documents in your possession, care or custody on or pertaining to:

- A. Eugene Dennis, date of birth August 10, 1905, date of death January 31, 1961, Social Security #063-12-4070. To assist your identification of these files and documents, please note the following chronology of places of residence and additional names utilized:
1. 1925-1930, Los Angeles, California -- Frank Waldron and Francis Waldron.
 2. 1930-1935, Union of Soviet Socialist Republics, South Africa, China -- Tim Ryan and Tim Milton.
 3. 1935-1937, Wisconsin -- Eugene Dennis and Gene Dennis.
 4. 1938-1940, New York, New York, Washington, DC and Chicago, Illinois -- Eugene Dennis and Gene Dennis.
 5. 1941, Union of Soviet Socialist Republics -- Tim Ryan.
 6. 1942-1961, New York, New York and Washington, DC -- Eugene Dennis and Gene Dennis.
 - 6a. During the period 1950-1951, Federal House of Detention, New York, New York.
 - 6b. During the period 1951-1955, Atlanta, Georgia, Federal Penitentiary.

B. Peggy Dennis, date of birth January 1, 1909, current address: 2020 Durant Avenue, Berkeley, California, Social Security #570-62-4982. To assist your identification of these files and documents, please note the following chronology of places of residence and additional names utilized:

1. 1925-1930, Los Angeles, California -- Regina Karasick and Reggie Carson.
2. 1930-1935, Union of Soviet Socialist Republics, South Africa, China -- Reggie Ryan.
3. 1935-1937, Wisconsin -- Peggy Dennis.
4. 1938-1940, New York, New York, Washington, DC and Chicago, Illinois -- Peggy Dennis.
5. 1941, Union of Soviet Socialist Republics -- Peggy Dennis.
6. 1942-1955, New York, New York, Washington, DC and California -- Peggy Dennis.
7. 1955-1960, New York, New York -- Peggy Dennis.
8. 1961-present, San Francisco, Oakland and Berkeley, California -- Peggy Dennis.
 - 8a. During the period June-September 1961, Union of Soviet Socialist Republics.
 - 8b. During the period June 1965-February 1966, Finland, Union of Soviet Socialist Republics, German Democratic Republic, Poland, Hungary and Yugoslavia.
 - 8c. During the period July-October 1972, Union of Soviet Socialist Republics.

C. Eugene Dennis Vrana, a/k/a Eugene Dennis, Gene Dennis, Jr., date of birth December 7, 1942, Social Security #117-32-1934. To assist you in your identification of these files and documents, please note that prior to August 4, 1978, his name was Eugene Dennis. His current address is 7401 W. Wright Street, Wauwatosa, Wisconsin.

To further assist your identification of these files and documents, please note the following chronology of places of residence:

1. 1942-1964, New York City, New York.
2. Summer 1961, Union of Soviet Socialist Republics.
3. 1960-1965, Madison and Milwaukee, Wisconsin.
4. 1963-1965, Chicago, Illinois and St. Louis, Missouri.
5. 1965-1974, Milwaukee, Wisconsin.
6. 1961-1982, San Francisco, Berkeley, Oakland and Los Angeles, California.
7. June 1967 and September 1981, Vancouver, B.C., Canada.

II.

This request also encompasses all documents, however filed and indexed, thus including, in addition to all "main files," all ELSUR files, all "DO NOT FILE" files, all "June" or "June mail" files, all Permanent Serial Chargeouts, all P&C files, all SAC safes, vaults and personal files, all NCIC, all Special File Rooms, all top F.B.I. officials' Special Files, and all other documents retrievable through any file system or search or retrieval system, however designated.

In the light of the fact that Eugene Dennis was for many years General Secretary of the Communist Party, U.S.A., it is certain that large numbers of documents of substance responsive to this request are in files other than those ordinarily searched through the "main file" system (and adjunct "see references" thereto). It is therefore essential that all other filing systems be searched to find such files and that the search be

conducted by officials of the agency with detailed knowledge of these additional filing systems.

Excluded from the scope of this request are all copies of court records, routine transmittals of such records, newspaper clippings, and other documents in the public domain such as reports of Congressional Committees and published articles by or about the requestors.

III.

I hereby request a prompt response within the ten days required by statute and as set forth in 28 C.F.R. Chapter I, including a detailed itemization of any requested documents which have been destroyed as is provided in Sec. 16.6(c).

If you intend to avail yourself of the ten-day extension that is permitted by Sec. 16.5(c), please be certain to fulfill the obligation of that Justice Department regulation to provide me "written notice . . . which sets forth the reason for the extension and the date on which a determination is expected to be dispatched" (emphasis added).

Please process the requested files in the following order: (1) files from filing systems other than "main files," (2) field office files, (3) Washington, DC headquarters files. In view of the large number of documents involved, this order of processing and release is essential to a reasonable compliance with this request.

IV.

In processing this Freedom of Information Act Request, please declassify and make available any currently classified documents under the procedure provided for under Executive Order #12,356 issued by the President on April 2, 1982. Additionally, for the reasons indicated in Part V. below, this is a request that as to whatever portions of the request are found to be exempted from disclosure pursuant to the Freedom of Information Act as amended, that such materials be released nevertheless through the exercise of favorable discretion as indicated in 28 C.F.R. Sec. 50.8. Please note in this regard that the requested materials substantially meet the criteria of Sec. 50.8(b) and 50.8(d).

V.

Evidently, a release of all of the requested materials would clearly benefit the general public and "will be of benefit primarily to the public as opposed to the requestor." 28 C.F.R. Chap. I, Part 16, Sec. 16.9(a).

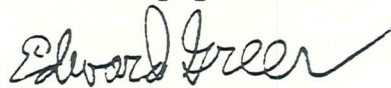
In this regard we hereby submit the Affidavits of Peggy Dennis (Appendix "A") and Eugene Dennis Vrana (Appendix "B") and a copy of the Affidavit of F. Gerald Ham, Acting Associate Director at the State Historical Society of Wisconsin, together with its accompanying press release and brochure on the Archives Division (Appendix "C").

On the basis of these Affidavits and the underlying facts to which they attest, this letter also constitutes a request for a waiver of all fees and reproduction costs in meeting this Freedom of Information Act request and the implementing regulation thereto at 28 C.F.R. Sec. 16.9. (To the extent that this request for a waiver of fees qualifies under the Act and Regulation, but does not comport with the interpretive regulation promulgated by the Department of Justice on December 18, 1980 titled "Interim Fee Waiver Policy," I request that the interpretive regulation be disregarded as invalid.)

As is evident from this request letter, this request is for the purpose of advancing historical knowledge and "primarily for the benefit of the general public" and fully meets the lawful criteria concerning waiver of fees. I should, of course, be amenable to discussion of this fee waiver as provided for in Sec. 16.9(c).

Thank you for your kind and prompt attention.

Sincerely yours,



Edward Greer

EG:hh

cc: Peggy Dennis
Eugene Dennis Vrana

AFFIDAVIT OF PEGGY DENNIS

My name is Peggy Dennis. My date of birth is January 1, 1909; my Social Security Number is 570-62-4982; my current address is 2020 Durant Ave, Apt. 404, Berkeley, CA 94704

I am surviving next-of-kin of my deceased husband, Eugene Dennis. His date of birth is August 10, 1905; the date of his death is January 31, 1961; his Social Security Number is 063-12-4070.

To the extent necessary in this specific matter I hereby waive on his behalf any restrictions under the Privacy Act which are necessary to obtain full release of files on or pertaining to him.

I hereby authorize Edward Greer, Esquire, whose office is at 133 Mt. Auburn Street, Cambridge, Massachusetts 02138, as my representative in the Freedom of Information Act requests to which this Affidavit is appended.

The materials requested on myself and on my late husband pursuant to the Freedom of Information Act will be donated directly upon receipt to the State Historical Society of Wisconsin.

The complete Eugene and Peggy Dennis Collection of personal and political materials, files and papers are now posited in the Social Action Archives of the Wisconsin Historical Society. All papers and materials received under this Freedom of Information Act request will be immediately added to that Dennis Collection.

All of these documents will be made available without restriction, as are those within the current Dennis Collection now in the Archives of the Historical Society, to scholars for purposes of historical research, as part of the massive documentations which the Society has compiled since the turn of the century on American social activism and trade unionism.

I do not have the personal funds with which to pay fees for the documents I am requesting on behalf of myself and my deceased husband under the Freedom of Information Act. In view of the exclusively public and historical research purposes for which they are being requested, I hereby request that all fees and copying costs attendant thereto be waived.

September 2, 1982


PEGGY DENNIS

(Individual)

STATE OF CALIFORNIA

COUNTY OF Alameda } SS.

On Sept. 2, 1982 before me, the undersigned, a Notary Public in and for said State, personally appeared *Peggy Dennis*

_____, personally known to me (or proved to me on the basis of satisfactory evidence.)

to be the person _____ whose name is _____ subscribed

to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Signature Cheryl L. Burkhart

Cheryl L. Burkhart

Name (Typed or Printed)



(This area for official notarial seal)

STAPLE HERE

AFFIDAVIT OF EUGENE DENNIS VRANA

My name is Eugene Dennis Vrana. My date of birth is December 7, 1942; my Social Security Number is 117-32-1934; my current address is 7401 W. Wright St, Wauwatosa, Wi 53213. Prior to August 4, 1978, my name was Eugene Dennis.

I hereby authorize Edward Greer, Esquire, whose office is at 133 Mt. Auburn Street, Cambridge, Massachusetts 02138, as my representative in the Freedom of Information Act request to which this Affidavit is appended.

The materials requested on myself pursuant to the Freedom of Information Act will be donated directly upon receipt to the State Historical Society of Wisconsin. My family's collection of personal and political materials, files and papers are now posited in the Social Action Archives of the Wisconsin Historical Society. All papers and materials received under this Freedom of Information Act request will be immediately added to that Dennis Collection. All of these documents will be made available without restriction, as are those within the current Dennis Collection now in the Archives of the Historical Society, to scholars for purposes of historical research, as part of the massive documentations which the Society has compiled on American social activism and trade unionsim.

I do not have the personal funds with which to pay fees for the documents I am requesting under the Freedom of Information Act. In view of the exclusively public and historical research purposes for which they are being requested, I hereby request that all fees and copying costs thereto be waived.

Eugene Dennis Vrana

September 22, 1982

Eugene Dennis Vrana

Subscribed and sworn to before me this

22 day of September, 1982

[Signature]
Notary Public, State of Wisconsin.

My Commission Expires 4-15-84

OUTLINE OF DATES AND PLACES - Eugene Dennis Vrana (also
known as Eugene Dennis; Gene
Dennis; Gene Dennis, Jr.)

1942-1964 New York City, N.Y.

1961 summer visit to U.S.S.R. (including World Youth
Forum).

1960-1965 Madison, Wisconsin (including Milwaukee).

1963-1965 Chicago, Ill. and St. Louis, Mo.

1965-1974 Milwaukee, Wisconsin.

1961-1982 San Francisco, Ca. (including Berkeley, Oakland,
and Los Angeles).

1967 June visit to Vancouver, B.C., Canada.

1981 September visit to Vancouver, B.C., Canada

AFFIDAVIT

My name is F. Gerald Ham and I am employed in the position of Acting Associate Director at the State Historical Society of Wisconsin located at 816 State Street, Madison, Wisconsin.

My duties include Administration of the Society's Social Action Collection. The Society has acquired extensive documentation since the turn of the century on the history of American social activism and trade unionism and is widely considered by scholars to be a national resource for the study of American socialism and communism. (Attached hereto is a brochure describing the Society and its scholarly archival collections.)

Recently the Society has received an important addition to its archival collections on the history of American radicalism with the acquisition of the papers of Eugene and Peggy Dennis. These papers were considered of sufficient significance to be the topic of a January, 1982 press release issued by the Society, a copy of which is attached.

I can confirm that in the short time the Dennis papers have been here (approximately one year), there has already been considerable scholarly interest in and use of them by PhD candidates and university faculty affiliated both with the University of Wisconsin and other institutions. These researchers have used or are intending to use the papers for such diverse topics as the history of socialist education and the Milwaukee labor movement in the 1930's and 1940's.

It is my judgment that the addition to the personal papers of the Dennis family (Eugene, Peggy, and their son Eugene Jr.) of the documents produced by the United States Government agencies concerned with their individual and/or collective political activities would greatly increase the value of this particular archive for historical and scholarly purposes. I would also expect that this addition would result in an increase in the overall scholarly use of this collection.

I believe that the materials held by United States intelligence agencies which I understand are the subject of a Freedom of Information Act request by Ms. Peggy Dennis constitute an invaluable historical resource and are clearly the kinds of materials which the statute intended to be the beneficiary of a waiver of fees.

Ms. Dennis has already indicated to us in writing that she will directly donate all materials received as a result of her Freedom of Information Act requests to our archives.

Oct 1, 1982, 1982
Dated

F. Gerald Ham
Name

STATE OF WISCONSIN
COUNTY OF DANE

Subscribed to before me this 1st day of October 1982.

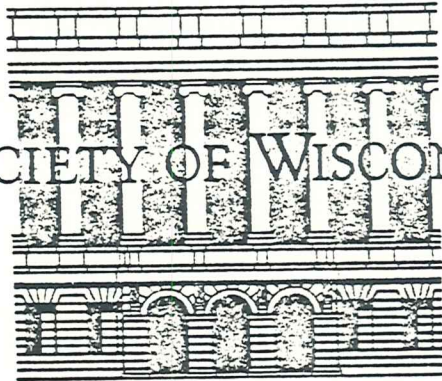
Jernard H. Behrke
Notary Public, Dane County, Wisconsin

My Commission Expires 11-24-85.

NEWS from

THE STATE HISTORICAL SOCIETY OF WISCONSIN

816 State Street, Madison, Wisconsin 53706



FOR MORE INFORMATION CONTACT:
Sarah Cooper, (608) 262-7304

FOR RELEASE: Immediately

STATE HISTORICAL SOCIETY OF WISCONSIN SOCIAL ACTION COLLECTION RECEIVES MAJOR DONATION OF HISTORIC PAPERS

The State Historical Society of Wisconsin has recently received an important addition to its archival collections on the history of American radicalism with the acquisition of the papers of Eugene and Peggy Dennis.

The collection spans a fifty-five year period, 1926 to date - thirty-five years of the couple's political work together as Communist Party activists and, since the death of Eugene Dennis, the twenty years in which Mrs. Dennis has continued her independent political activities.

The papers offer insights into social issues and individual activities far beyond the fifteen years in which Eugene Dennis was the national head of the Communist Party, USA, from 1946 until his death in January, 1961. Dennis became a prominent political figure, beginning with his activism in California in the early 1920s, through his organizing in Wisconsin in the 1930s, and his national Party work in New York and Washington in the 1940s and 1950s. His advocacy of coalitions among progressive organizations and his resistance to sectarianism within his own organization are especially well documented in the collection.

- MORE SEE REVERSE -

The file on the years Eugene and Peggy Dennis spent in Wisconsin may be of particular interest to anyone wanting to explore the activities of Communists in the rank-and-file movement which helped form the CIO (Congress of Industrial Organizations) in the 1930s. This was also the period of the controversial tactic of the United Front, a coalition of organizations on the Left joined together to oppose fascism and to sustain the gains of the New Deal. Here one can trace the evolution of Dennis's support for the Farmer-Labor-Progressive Federation and his critiques of the then governing state Progressive Party and the then governing Socialist Party of Milwaukee. Included in the papers is an unpublished manuscript compiling a number of major articles by Dennis over the years on the United Front, with introductory comments by Peggy Dennis.

The collection contains clippings, personal notes, and personal correspondence on the 1949 trial and conviction of Dennis and ten of his colleagues under the Smith Act. Included too is a lengthy handwritten legal brief composed by Dennis while in the Atlanta federal prison, outlining for the Party's attorneys the political and constitutional arguments to oppose the McCarran Act threatening the Party's legality at that time. Other notes written in prison offer some preliminary views on the U.S. penal system. A large file for that period contains letters exchanged by Eugene and Peggy Dennis during the prison years, 1950-1955. Only a few of these have been published.

Articles, personal notes, and letters provide a base for analysis of the internal difficulties within the Communist Party after its leaders emerged from prison and from the underground. This was the period when they sought to rebuild the Party and to deal with the 1956 denunciations by Khrushchev of the crimes of the Stalin era.

After her independent work against McCarthyism in the 1950s and several years in the 1960s as foreign editor of the Party's west coast weekly The People's World, Peggy Dennis resigned from the Party in 1976; the following year her book Autobiography of An American Communist: A Personal View of a Political Life was published. She has continued to write for newspapers and journals on social and movement issues, drawing on her experiences in this country and on her many stays in the Soviet Union and travels in Europe and Asia.

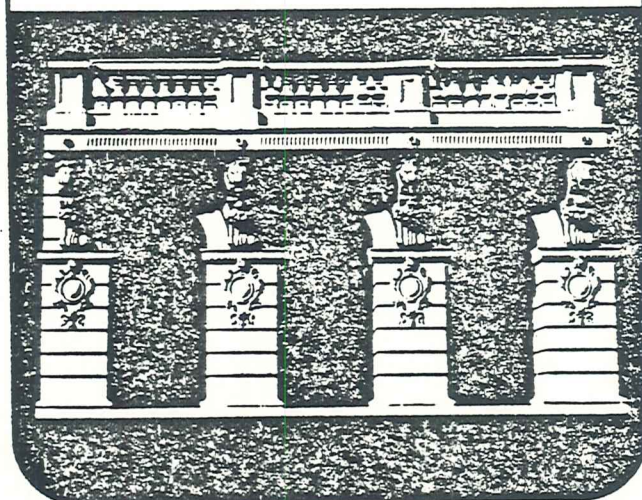
The collection brings together in one place many of these writings as well as an early draft of a still-in-progress manuscript on her family's experiences in the McCarthy years and her own analysis of the errors of the Communists and the Left during that decade. Included too is her personal correspondence with individuals around the country revealing her perspectives on the Party and social movements for the last twenty years. The collection is open-ended; Mrs. Dennis will continue to add papers in the future.

The Eugene and Peggy Dennis papers, now housed in the Society's Archives, augment existing collections from Fred Blair, Wisconsin Communist Party leader; Joseph Starobin, foreign editor for the Daily Worker in the 1940s; and Betty Gannett, Communist Party educator. Like the Tamiment Collection at New York University and the Hoover Institution on War, Revolution and Peace at Stanford, Society holdings in this field constitute a national resource for the study of American socialism and communism. They are one facet of the massive documentation the Society has acquired since the turn of the century on the history of American social activism and trade unionism.

#

The
State Historical Society
of Wisconsin

Archives Division



The State Historical Society of Wisconsin performs many functions, among them the collection and preservation of unpublished records for use in historical research. The scope of these resources encompasses the history of Wisconsin and the other states as well as many foreign countries. The Society's large building, listed on the National Register, is conveniently located on the Madison campus of the University of Wisconsin, within easy walking distance of the graduate and undergraduate libraries, and not far from downtown Madison. The Society serves as the University's American history resource center.

Archives – Manuscripts

The Society, founded in 1846, has been the official depository of the archives of the State of Wisconsin since 1947 and has more than 25,000 cubic feet of records dating from 1799 to the present. Included are papers of the governors, the legislature, courts, most of the state's agencies, and county and local governments.

The Society has more than 22 million manuscript items. Collecting originally focused on early Wisconsin, the Old Northwest, and the Great Lakes states. Especially notable are the Draper Collection of Manuscripts relating to the trans-Allegheny frontier from 1750 to 1815 and the Cyrus H. McCormick Collection of interrelated family and business papers. Recent collecting policy has emphasized more contemporary phases of American life and history, including the labor movement, socialism, civil rights, and other significant social, economic, and political issues. Since 1955 the Society's Mass Communications History Center has acquired the papers of nationally prominent individuals and organizations in radio and television broadcasting, journalism, public relations, advertising, and other communications media.

Maps

The map and atlas collection documents the discovery and early exploration of the Americas and the geographical and historical development of Wisconsin and the Great Lakes region. Rare pre-1800 maps by European cartographers, early territorial and state maps with emphasis on the Old Northwest, more than 1700 county plat maps and atlases, unique bird's eye views of nineteenth-century Wisconsin communities, and Sanborn Insurance Maps for Wisconsin urban areas all contribute to the diversity of the Society's cartographic resources.

Iconography, Film, and Recorded Sound

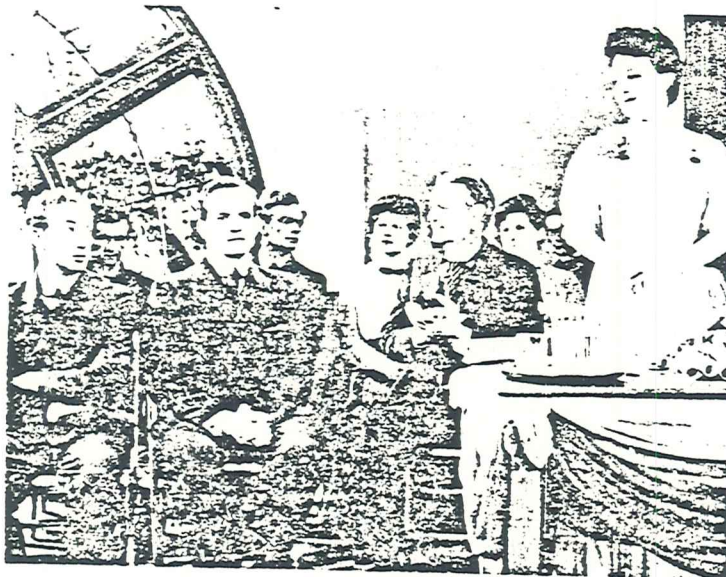
Researchers have access to more than one million photographs, original negatives, cartoons, lithographs, portraits, posters, albums, and related ephemera. One special strength of this collection is its pictures of rural and small-town life in the upper Midwest from about



1880 to the mid-1920's. Photoprints of most pictures may be purchased. Also available are tape and disc sound recordings donated to the Society or produced by its Oral History staff.

The Wisconsin Center for Film and Theater Research

The Center is operated cooperatively by the University of Wisconsin and the Society. Its collections, available for research at the Society, include records of prominent people and organizations in the theater and motion pictures industry, motion picture films and still photographs, and the archives of the United Artists Corporation.



Reading Rooms and Research Aids

On the Society's fourth floor the Division has two study areas for research and writing projects. The Archives-Manuscripts Reading Room is equipped for researchers using maps, manuscripts, and Wisconsin public records. Individual study tables, book carts to hold materials, a Xerox copier, and electric outlets for personal copying equipment are provided. Tape recording and typewriting are permitted. The H. V. Kaltenborn Audio-Visual Center and the Iconography Study Room have facilities for listening, viewing, and recording. In both study areas archivists are accessible for consultation and assistance in the use of collections and catalogs. The staff will do everything possible to make each researcher's visit pleasant and profitable.

Access to the holdings of the Archives Division is through four customary types of finding aids:

Published descriptive guides, which can be found in many research libraries throughout the country and may be consulted locally in advance.

Registers or detailed inventories for both public archives and manuscript collections.



A catalog to archives of the state and its political subdivisions.

Card catalogs to manuscript collections, maps, sound recordings, photographs and other visual records, and to other special collections.

Also readily accessible are published bibliographies and guides to similar types of materials throughout the United States.

Library

The Society's Library, located on the second floor, has a large reading room with catalogs to the collections of books, pamphlets, newspapers, serials, and government documents. It is generally open from 8 a.m. to 10 p.m. Monday through Friday and from 8 a.m. to 5 p.m. on Saturday.



Copy Service

A self-service Xerox copier, located in the Archives-Manuscripts Reading Room and supervised by the reference staff, may be used for 10c a print. Letter or legal-sized unbound sheets may usually be Xeroxed. To avoid damage to fragile pages, most bound volumes, maps, and other oversize sheets may not be Xeroxed. Researchers should allow time to make prints as they examine each box of manuscripts or archives, for staff members are not available to copy and refile materials for patrons. Photostatic and microfilm copying service is offered at reasonable rates when needed. A 3-M copier is in the Iconography Study Room, with prints at 20c each. Cameras or other copying devices may be used in both study areas with the approval of the State Archivist. In the visual collections photography is limited to 35 mm positive or transparency film, and resale is prohibited.

Restrictions

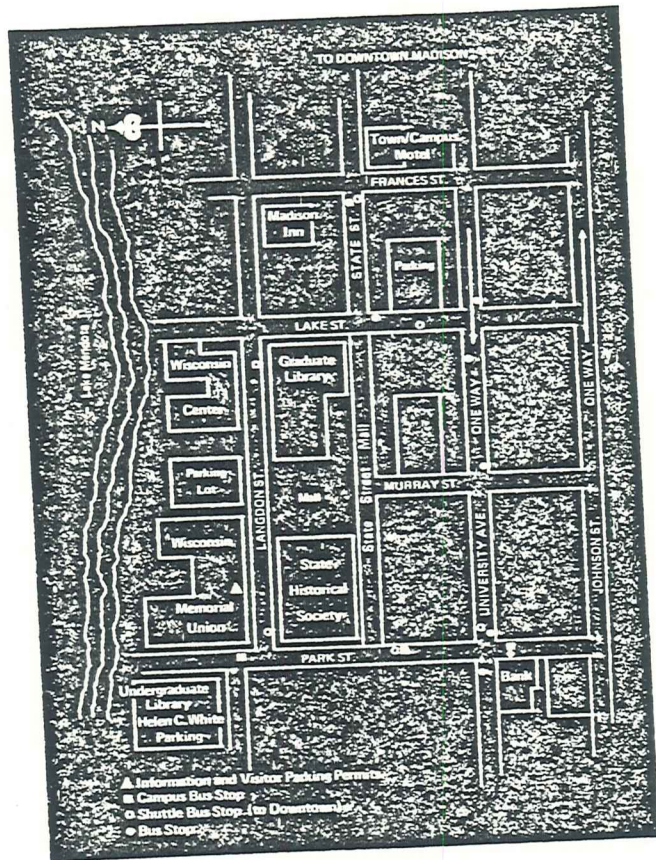
A few collections in all categories have been restricted by their donors. A researcher should inquire beforehand about restrictions on the materials he or she desires to use.

Registration

Every researcher is asked to sign an annual registration form that includes an agreement to abide by the rules governing the use of the Division's holdings.

Hours

The archives-manuscripts and audio-visual study areas are normally open from 8 a.m. to 5 p.m. Monday through Friday, and the Archives-Manuscripts Reading Room is also open most Saturdays during these hours. Exceptions occur most frequently on Saturdays during the summer and during the University's recess periods. For such exceptions, detailed schedules are posted or will be mailed on request.



Area Research Centers

The Society holds manuscripts of regional interest and local public records at its thirteen Area Research Centers on the University of Wisconsin campuses at Eau Claire, Green Bay, La Crosse, Menomonie, Milwaukee, Oshkosh, Racine-Kenosha, Platteville, River Falls, Stevens Point, Superior, and Whitewater, and at Northland College in Ashland. Archives, manuscripts, and newspapers at the Society can be sent to any center for research use. Reciprocally, a researcher may request that archives and manuscript collections be transferred for a limited time from a center to Madison or to any other center. Transfers may require two or more weeks to arrange.

Accommodations

Within a few minutes' walk from the Society are the Madison Inn and Town/Campus Motel and a variety of meal facilities ranging from snack bars to restaurants featuring foreign cuisine. Within about a mile other hotels and motels may be reached by longer walks or by bus. Detailed suggestions for housing are available upon request.

Buses and Parking

Automobile parking in the campus area is a problem. All-day or five-hour facilities shown on the map are usually filled by mid-morning. The Lake Street ramp, Memorial Union lot, and the Helen C. White garage on Park Street across from the Union have all-day fees. Street parking, when available, is limited by two-hour meters. A researcher may obtain a one-day or one-week visitor's parking permit from the University. A campus bus runs about every ten minutes between outlying parking lots and the campus, and city buses run between the campus area and all sections of Madison.

Write Ahead

Because of the arrangements with the Area Research Centers, the Society requests that a researcher write ahead to insure that the material desired for study is available where he or she wants to use it — either in Madison or at one of the Area Research Centers. Advance inquiry should also be made about possible restrictions on use or reproduction of materials.

The State Historical Society of Wisconsin
816 State Street
Madison, Wisconsin 53706

**The staff of the Archives Division
looks forward to serving you.**

EDWARD H. GREER
ATTORNEY

133 MT. AUBURN STREET, CAMBRIDGE, MASS. 02138 (617) 354-3089

By certified mail

December 8, 1982

Assistant Attorney General
Office of Legal Policy
Attn: Office of Information and Privacy
U.S. Department of Justice
Washington, D.C. 20530

Re: Freedom of Information Appeal of Eugene Dennis (deceased),
Peggy Dennis and Eugene Vrana Dennis

Dear Sir:

This letter constitutes an administrative appeal pursuant to the Freedom of Information Act as amended, 5 U.S.C. §552(a)(6), on behalf of my clients the late Eugene Dennis (through his next-of-kin, surviving wife Peggy Dennis), Peggy Dennis and Eugene Dennis Vrana with respect to their simultaneous original requests of October 22, 1982 (a copy of which is attached hereto and incorporated herein). In particular, this request is an appeal from the failure of the following Divisions of the Justice Department and Federal Bureau of Information to provide the requested documents within the time required by law and to waive fees thereon:

1. FBI Headquarters, Request #231,807;
2. New York Field Office, FBI, Request #1110 A, B, C;
3. Wisconsin Field Office, FBI;
4. San Francisco Field Office, FBI, Requests #190-1058, #190-1059, #190-1060;
5. Criminal Division, Justice Department, Request #9368;
6. U.S. Parole Commission, Justice Department
7. Executive Office for U.S. Attorneys, Justice Department;
8. Bureau of Prisons, Southeast Regional Office, Justice Department.

Moreover, with respect to the partial release of documents by the Milwaukee Field Office, FBI on Eugene Dennis (dated November 22, 1982), this letter constitutes an appeal from the failure of

Office of Information and Privacy
December 8, 1982
Page Two

said office to furnish twenty-two (22) of the twenty-three (23) documents located and the exemptions asserted as to the fragmentary single document provided as improperly invoked. With respect to the Southeast Regional Office of the Bureau of Prisons, we are in the process of providing same with the death certificate requested of Eugene Dennis but do not consider such to constitute a valid basis for denial with regard to a public figure whose demise is well known.

Without reiterating the content of the appended request, I would, however, like to make a particularized plea that this matter be handled on an expedited basis. Evidently the request is for serious scholarly historical and public purposes as opposed to casual curiosity or commercial advantage. In this circumstance, where the matter is of considerable immediate scholarly interest (Affidavit of F. Gerald Ham, appended) a favorable decision on the fee waiver together with expedited processing seems particularly appropriate.

Sincerely yours,


Edward Greer

Appendix
cc: Peggy Dennis

EG:stm



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

JUN 29 1983

Edward H. Greer, Esq.
133 Mount Auburn Street
Cambridge, Massachusetts 02138

FOIPA Nos. 231,807, 231,808,
231,809

Dear Mr. Greer:

This is in further response to your Freedom of Information-Privacy Acts (FOIPA) request concerning Eugene Dennis, Peggy Dennis and Eugene Dennis Vrana to FBI Headquarters (FBIHQ).

Contained in our FBIHQ records are approximately 6,830 pages. Listed below is the material and approximate number of pages located at FBIHQ concerning the subjects of your request.

<u>Subject</u>	<u>Title</u>	<u>FBIHQ Pages</u>
Eugene Dennis	Security Matter	14
Eugene Dennis	Internal Security	5,250
Eugene Dennis	Contempt of Court	450
Peggy Dennis	Internal Security	800
Eugene Dennis Vrana	Anti-Riot Laws	16
Eugene Dennis Vrana	Security Matter	300

Your request for a waiver of fees for documents located at FBIHQ has been considered in accordance with the provisions of Title 5, United States Code, Section 552 (a)(4)(A) which permits an agency to waive or reduce fees in the public interest when furnishing information is considered as primarily benefiting the general public. The principal question is whether release of the particular information which you have requested will result in primary benefit to the general public. We have concluded that it will not and, therefore, your request for a complete waiver of fees is denied. However, we have determined that a partial waiver of fees in the amount of 10 percent is appropriate. In reaching this decision, a number of factors were considered, including the nature of information requested; the purpose for which the information is sought; the size of the public to be benefited; the likelihood that some tangible public good will be realized as a result of this release; whether disclosure is timely with regard to a matter of current public interest; its relevance

Edward H. Greer, Esq.

to important legal, social or political issues; and whether the material is personal in nature or will serve only the private interests of the requester.

Department of Justice regulations, Title 28, Code of Federal Regulations, Sections 16.9 and 16.46, require notification to a requester when anticipated charges exceed \$25. This letter constitutes such notification.

Section 16.9 (b) (1) authorizes the charging of fees for duplication of documents and Section 16.9 (e) (1) states where the anticipated fee chargeable exceeds \$25, an advance deposit of 25 percent of the anticipated fee or \$25, whichever is greater, may be required.

Following a preliminary review of documents pertaining to your request, it is conceivable that duplication costs of approximately \$614.70 may result representing a charge of 10¢ per page less the 10 percent reduction for the partial waiver of fees. Accordingly before processing your request, we require a \$153.68 advance deposit.

We caution, however, that your indication of approval and consent to incur such fees will not necessarily result in the entire contents of our records being disclosed to you, since we are guided by the provisions of the Freedom of Information Act (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5 United States Code, Section 552a) in disclosing material from our records. No fees will be assessed for documents not released.

Before taking further action, we will await receipt of your written willingness to incur the total estimated fee of \$614.70 and your deposit of \$153.68 in connection with the processing of your request. Your check or money order should be made payable to the Federal Bureau of Investigation.

Please place your FOIPA request number on your check or money order.

If you disagree with the decision regarding fee waiver, or from any other denial contained herein, you may appeal. Appeals should be directed in writing to the Assistant Attorney General, Office of Legal Policy (Attention: Office of Information and Privacy), United States Department of Justice, Washington, D. C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Edward H. Greer, Esq.

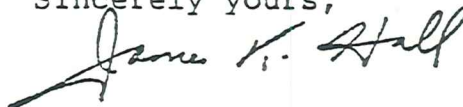
Please cite the FOIPA number assigned to your request so that it may be easily identified.

If your clients desire a search of our Identification Division records for any arrest record that might pertain to them, they must comply with the instructions set forth in Attorney General Order 556-73, a copy of which is enclosed. Fingerprint impressions are needed for comparison with records in the Identification Division to insure that an individual's record is not disseminated to an unauthorized person.

Effective January 17, 1983, the combined NCIC-CCH file was abolished. Any information which was formally contained in the NCIC-CCH file can be obtained from the Identification Division. However, you must comply with the instructions set forth in Attorney General Order 556-73 attached.

At this time, no decision has been reached by our Fee Waiver Committee concerning your request for a waiver of fees for our field office records pertaining to Eugene Dennis, Peggy Dennis and Eugene Dennis Vrana. You will be advised at a later date as to their decision and at that time furnished with a page count for documents located in our field office files.

Sincerely yours,



James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Enclosure

RULES AND REGULATIONS

[Order 556-73]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart C—Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee of five dollars.

Since the FBI Identification Division is not the source of the data appearing in identification records and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and Federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI by 28 CFR 0.85(b), Part 16 of 28 CFR Chapter I, is amended by adding the following new Subpart C:

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet," is a listing of fingerprints submitted to and retained by the FBI in connection with arrests and, in certain instances, fingerprints submitted in connection with employment, naturalization or military service. The identification record includes the name of the agency or institution which submitted the fingerprints to the FBI. If the fingerprints submitted to the FBI concern a criminal offense, the identification record includes the date arrested or received, arrest charge information and disposition data concerning the arrest if known to the FBI. All such data included in an identification record are obtained from the contributing local, State and Federal agencies. The FBI Identification Division is not the source of such data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Identification Division, Washington, D.C. 20537, or may present his written request in person during regular business hours to the FBI Identification Division, Room 11262, J. Edgar Hoover Building, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for provision of identification record.

Each written request for production of an identification record must be accompanied by a fee of five dollars (\$5.00) in the form of a certified check or money order, payable to the Treasurer of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 483a and is based upon the clerical time beyond the first quarter hour to be spent in searching, identifying and reproducing each identification record requested, at the rate of \$1.25 per quarter hour, as specified in § 16.9. Any request for waiver of fee shall accompany the original request for the identification record and shall include a claim and proof of indigency. Consideration will be given to waiving the fee in such cases.

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his challenge as to the accuracy or completeness of any entry on his record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.