

# MEMORANDUM

## ATTORNEY-CLIENT COMMUNICATION PRIVILEGED AND CONFIDENTIAL

July 30, 1996

To: Review Board

cc: David G. Marwell

From: T. Jeremy Gunn

Subject: Zapruder Film

David has asked me to give you an update on issues relating to the Zapruder film. Because of the possibility of future litigation on this issue, and because it is important that the planning of possible legal strategy be kept confidential at this point, I am taking advantage of this attorney-client communication to provide you with my current assessment of the issues.

### Background

The camera-original Zapruder film (8mm Kodachrome) was sold to Time-Life shortly after the assassination. The camera-original film was shown to the Warren Commission and would seem, therefore, to come within the JFK Act's definition of an "assassination record."<sup>1</sup> Shortly thereafter,

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<sup>1</sup>The Review Board staff has recently come across information that, in 1967, Time-Life hired Moses Weitzman, a photographic expert at Manhattan Effects in New York City, to produce a high-quality internegative of the film. He developed a method for making, for the first time, a high-quality 35mm internegative directly from an 8mm film. To the best of our understanding, he in fact created a 35mm internegative from the camera original. In 1978, CBS Inc., which licensed the Zapruder film from Time-Life, went back to Weitzman and asked that he make a new high-quality internegative from the camera-original film. Weitzman thereupon re-examined the original Zapruder film and concluded that it had deteriorated to such an extent that there was more information available from the 1967 internegative than from the original film. Accordingly, this 1967 internegative, which most persons seem to have forgotten, may contain the most information of any version of the film. Last week we learned that, apparently, the valuable 1967 35mm internegative is stored at the office of Zapruder's attorney, James Silverberg, who previously was unaware that he had the film.

Time-Life sold all of its interests in the Zapruder film and its copies back to the Zapruder family for \$1.00. To the best of our understanding the camera-original Zapruder film has been stored in the National Archives since 1978.

### **The Position of the Department of Justice**

Kirk Manhardt of the Department of Justice (DOJ) has orally conveyed his belief, which he says reflects the current opinion at DOJ, that the JFK Act does not empower the Board to “take” the Zapruder film. He informed me a few weeks ago that his supervisor, David Cohen, was preparing to send a letter to the Review Board suggesting that the Board does not have the power to take either the Zapruder film or other private property. I urged him not to send such a letter, but to send instead a letter asking questions and soliciting our analysis of the issue. I said that it would be very unfortunate and disadvantageous for the Board if such a letter were to leak. It could prejudice our case in the Connick matter as well as other possible legal disputes. He finally agreed to send a somewhat toned-down letter. See Attachment A (Cohen to Gunn, June 25, 1996).

One of the principal problems for the Board is that DOJ is the entity that will make the decision on behalf of the U.S. Government as to whether the JFK Act empowers the Board to “take” private property. Thus, if DOJ believes that the Board cannot take the film, the Board will be hamstrung.

In order to counter the impending decision by DOJ, we sent a response to David Cohen that outlines why we believe that the JFK Act empowers the Board to take the Zapruder film. See Attachment B (Gunn to Cohen, July 24, 1996). We have, as of yet, received no response to this letter.

### **Zapruder’s Position**

Henry Zapruder would like to get all of the legal issues surrounding the film resolved as soon as possible. He states that he has no current desire to sell the film, but we cannot, of course, be certain that that is true. He has revealed that he has had the film evaluated and that the appraisal was for \$30 million. He is prepared to litigate the issue and demand \$30 million from the government.

## **The National Archives**

I believe that the National Archives is uncertain as to its position on the Zapruder film. It clearly would like to keep the Zapruder film in storage. It clearly would like to have all of the legal issues resolved. It is also, I believe, extremely concerned about the political implications and fallout if the film were to be taken. If there were to be a backlash from Congress for the spending of \$30 million of taxpayer money on a 10-second film, the Archives would be a likely target.

## **Possible Basis for Resolution of the Issues**

Although the Board has not formally elaborated its position on the Zapruder film, I presume that some of the Board's principal concerns are (not necessarily in order of importance): not losing all rights to the Zapruder film by an adverse decision from DOJ; obtaining all forensic evidence possible from the film; and having the best possible copy of the film available for public inspection. In an effort to achieve these goals, and to determine whether there may be some possible resolution, we have outlined a draft proposal and have provided it to Zapruder, the Archives, and DOJ.<sup>2</sup> See Attachment C (Draft Agreement Between LMH Company and the National Archives, July 24, 1996). We have stressed repeatedly to all parties that the Board has not taken a position on any of the issues in the draft and that the Board may reject one or all of its provisions.

We have not received a formal reply from any of the parties. If the Board were able to broker an agreement along the lines suggested, it would have the advantages of enabling us to conduct immediate forensic examinations (without waiting for DOJ approval or the outcome of protracted litigation); making high-quality copies available immediately; enlisting the support of DOJ for future battles; and save the taxpayers what might be a significant amount of money.

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<sup>2</sup>We have received a tentative agreement from Mr. Silverberg that, if we are able to work out an agreement along the lines proposed, he will make available all of the internegatives in his possession for producing the best quality copy possible.