

MEMORANDUM

May 20, 1998

To: Daniel R. Moll

From: T. Jeremy Gunn

Subject: The Camera-Original Zapruder Film

I am writing in response to your request that I prepare a memorandum for you in anticipation of the Review Board's meeting with Chairman Burton, which is tentatively scheduled for Thursday, June 4, at 11:00 a.m. The issue of concern to the Review Board is the status and disposition of the camera-original Zapruder film that depicts the assassination of President Kennedy. The principal issue is whether there should be a "taking" of private property (the Zapruder film) for public use (placement in the National Archives), for which "just compensation" would be due under the Fifth Amendment of the U.S. Constitution. The Board wishes to discuss this issue with the Chairman of its oversight committee.

Background

Abraham Zapruder filmed the assassination of President Kennedy with an amateur movie camera. When the Secret Service learned of Mr. Zapruder's film, it accompanied him to a Kodak laboratory in Dallas where the film was developed. The original film was then transported to another lab, where three "first-day copies" were made from the original. Zapruder lent two copies to the U.S. government. He subsequently sold the original and one copy to Time-Life for \$150,000, to be paid in six equal installments over a period of years. The two copies lent to the government were subsequently donated to the government and now reside at the National Archives.

After several years, Time-Life decided to return the original film and its first-day copy to Zapruder for a cost of \$1.00. The Zapruders thereupon deposited the original film in courtesy storage at the National Archives, where it remains today. We believe that the remaining third-day copy is in the possession of the Zapruders' lawyer, and we are working to confirm that.

The JFK Act

The JFK Act provides that all “assassination records,” as are defined elsewhere in the statute, should be transferred to the JFK Collection at the National Archives. President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107, Pub. L. 103-345 (as amended) (“JFK Act”). The Board believes that the original Zapruder film falls within the statutory definition of an “assassination record” in that it “is related to the assassination of President John F. Kennedy,” that it was “made available for use by . . . the Warren Commission,” and that it was in the “possession or control” of a government office at the time the JFK Act was signed into law. Accordingly, the Board believes that, by operation of law, the “private” film should be transferred to the JFK Collection and that the film should become public property for which the Zapruders are entitled to the fair-market value of the film.

On the other hand, the JFK Act does not explicitly provide that the Review Board has “takings power” nor is there explicit evidence that Congress intended that the JFK Act would result in any takings on behalf of the United States. Although there is no meaningful legislative history on the subject, it is our understanding that, at the time of the adoption of the JFK Act, congressional staffers (and perhaps Members of Congress as well) were aware that the privately owned original film was in the Archives.

Current Status

In April 1997, the Review Board announced that, in accordance with its responsibilities under the JFK Act, it intended to direct the Archivist, in August 1998, to transfer the original Zapruder film to the JFK Collection at the National Archives. (This would not change the physical location of the film, which is in cold storage, but would affect the legal status of the film.) It is our understanding that the Department of Justice has been engaged in negotiations with the Zapruders’ representatives since April of 1997 regarding the monetary value of the film and that the two sides are far apart with respect to an appropriate price. It is our understanding that any payment by the U.S. government for the film would come out of the “Judgment Fund.”

The Review Board recently met with Frank Hunger, the Assistant Attorney General for the Civil Division, who is the official at the Justice Department who ultimately oversees issues involving commercial litigation on behalf of the United States and the Judgment Fund. It is my personal perception that Mr. Hunger is attempting to make an appropriate and justifiable decision about how the Zapruder film should be handled. Although I am not speaking for Mr. Hunger, it is my perception that he understands the importance of the Zapruder film, but that he also is concerned about the potential cost to the taxpayers. After meeting with Mr. Hunger, the Board decided it

would like to meet with Chairman Burton to discuss this issue.

The Pending Questions

The Board would like to discuss with the Chairman the following issues:

- 1) the importance of the original Zapruder film;
- 2) the options, including:
 - continued Department of Justice negotiations with Zapruders to establish a price;
 - litigation in the Court of Claims;
 - amending the JFK Act to provide explicitly for takings authority;
 - enacting special legislation for taking the Zapruder film (as it did with other artifacts related to the Kennedy assassination in 1965) (*see* enclosed copy of Pub. L. 89-318 attached law and Department of Justice action).

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I would be pleased to discuss this issue with you further or provide any additional details that you think would be of assistance to you or the Chairman.