

ASSASSINATION RECORDS REVIEW BOARD

HEARING ON THE STATUS AND DISPOSITION

OF

THE "ZAPRUDER FILM"

and

PUBLIC MEETING

Wednesday, April 2, 1997

1:00 P.M.

Archivist's Reception Room (Room 105)
National Archives and Records Administration
Washington, D.C.

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1 P R O C E E D I N G S

2 JUDGE TUNHEIM: I call to order this public
3 meeting -- public hearing of the Assassination Records
4 Review Board.

5 Thank you all for coming today. I want to
6 first express my appreciation, the appreciation of the
7 board to the National Archives for permitting us to
8 meet in this historic reception room. We are happy to
9 be here and happy to be able to use the facilities.

10 This is not a meeting or a function of the
11 National Archives. The Assassination Records Review
12 Board is an independent federal agency, not part of the
13 National Archives. I would ask that everyone take care
14 with the antiques and old furniture and rugs that are
15 in this building -- or in this room. We would
16 appreciate that.

17 I also want to thank our witnesses today for
18 agreeing to participate in this important hearing
19 before the board.

20 A little information about the board. The as
21 as records review board members were appointed by

President Clinton, confirmed by the Senate, in 1994.

1 We have been at work now for almost three years working
2 on implementing the President John F. Kennedy
3 Assassination Records Collection Act of 1992.

4 We primarily have been locating, securing,
5 and releasing to the public records related to the
6 tragic assassination of President Kennedy. Much of the
7 records that have been released are records that have
8 been held in Federal Government files. We also have
9 been on the search for additional records, whether they
10 be in the hands of state and local governments or in
11 the hands of private individuals that may wish to
12 donate their material to the United States.

13 This has resulted in an ever-growing
14 collection of the records of the assassination at the
15 National Archives at College Park. Upwards of nearly
16 three and a half million pages are now available to the
17 public at the National Archives.

18 The goal of the Assassination Records Review
19 Board is the goal -- was the goal of Congress in
20 passing the Records Collection Act, is to ensure the
21 broadest possible public release of the records of the

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assassination of President Kennedy, relevant records

1 which were created before the assassination and
2 certainly all of the records of its investigatory
3 aftermath.

4 It is not, I emphasize, it is not the
5 responsibility of the Review Board to solve remaining
6 mysteries associated with the assassination or to reach
7 conclusions about the assassination itself. Rather, it
8 is the duty of the board and the responsibility of the
9 board to secure and release to the public, to the
10 greatest extent possible, the records that
11 unfortunately have remained shrouded in secrecy through
12 so many years since the events in 1963.

13 Let me turn to today's hearing. The purpose
14 of today's hearing is to seek public comment and advice
15 on what should be done with the camera-original motion
16 picture film of the assassination that was taken by
17 Abraham Zapruder on November 22, 1963. That film has
18 been stored, the original has been stored at the
19 National Archives. It was placed there by Mr.
20 Zapruder's heirs, which now have formed a company, and
21 they claim to possess legal title to the film.

So the Review Board is faced with the

1 question of how to properly handle this artifact, the
2 original -- the camera-original film from the day of
3 the assassination. We have assembled today for
4 testimony an interesting group of experts related to
5 legal issues that are associated with this question,
6 and certainly issues relative to the value of the
7 camera-original film taken by Abraham Zapruder, the
8 film itself.

9 I would like to ask before we begin whether
10 any of the other Review Board members have any comments
11 that they would like to make before we get into the
12 witnesses.

13 [No response.]

14 Again, I appreciate all of you coming today.
15 Thank you for attending this hearing. We are going to
16 hear first from the general counsel for the
17 Assassination Records Review Board, Mr. Jeremy Gunn,
18 who is going to outline some of the issues that are
19 presented to the Review Board by the Zapruder film.

20 Mr. Gunn.

21 STATEMENT OF T. JEREMY GUNN

MR. GUNN: Thank you, Mr. Chairman, members

1 of the Review Board, Dr. Marwell. The meetings of this
2 board are regulated by the federal law called the
3 "Government in the Sunshine Act." Under the Sunshine
4 Act, the Review Board's deliberation should be open to
5 the public except to the extent that the deliberations
6 would involve issues relating to national security or
7 certain types of legal strategy.

8 The vast majority of the board's
9 deliberations to date have been in closed meetings
10 where issues of national security have been discussed
11 in the records that the board has reviewed.

12 The question now before the board is what
13 action it should take -- if any -- with regard to the
14 disposition of the original Zapruder film. It
15 necessarily involves discussion of issues that are
16 properly within the public domain but it also involves
17 issues that may involve some type of legal strategy.
18 In my opinion the board is acting properly in holding
19 this open meeting and -- to the greatest extent
20 possible -- deliberating publicly about issues that are
21 of public concern.

I would like to provide a little bit of

1 background about the Zapruder film. The conventional
2 story of the Zapruder film is as follows. Mr. Abraham
3 Zapruder was a clothing manufacturer in Dallas, Texas,
4 who had -- his company was located near Dealey Plaza.
5 On November 22nd, Mr. Zapruder took this late model
6 Bell & Howell Zoom Camera containing double 8 mm Kodak
7 film to Dealey Plaza to record the presidential
8 motorcade. The film that he took there is now
9 universally regarded as including some of the most
10 important images of the actual assassination.

11 After the motorcade passed, the Secret
12 Service learned of his film and accompanied him to a
13 Kodak laboratory in Dallas where the original film was
14 developed. They then went to Jamieson Film Company
15 which made three copies, which I will refer to as the
16 "first-day copies," of the original film. Two of those
17 first-day copies were loaned to the Secret Service and
18 are now in the hands and in the custody of the National
19 Archives. They are the property of the U.S.
20 Government. The third first-day film, along with the
21 original, was subsequently sold, as I will get into in

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a moment.

1 Now, when I refer to the terms "original" and
2 "camera original" I am describing what is generally
3 thought to have been the film that was actually in Mr.
4 Zapruder's camera at the time the motorcade passed. I
5 will use the term "copy" to refer to any image that was
6 made from that original film.

7 Some researchers believe that what we are
8 calling here today the camera-original may not in fact
9 be the camera-original film. I am going to continue to
10 use the term "camera original" to describe what is
11 commonly understood without any prejudice to whether
12 that is in fact the original film or whether there may
13 indeed be a copy -- or a film that precedes that.

14 Shortly after the film was developed, Mr.
15 Zapruder sold the original film and his remaining
16 first-day copy to Time, Inc. Although there has been
17 some controversy in the past regarding the amount that
18 Mr. Zapruder was actually paid by Time, Inc., the
19 record reflects that he received a \$25,000 cash
20 payment, which he then gave to the Dallas Police
21 Department for the widow of Officer Tippett, and he

22 received subsequent payments totaling approximately

1 \$150,000 over a several-year time span. Life Magazine,
2 which then had the original film, published some frames
3 of the Zapruder film as early as November 29th, 1963,
4 and in some subsequent issues during the following two
5 years.

6 In 1975, Time-Life sold the original film to
7 LMH Company for \$1. The shareholders of LMH Company
8 are the widow and children of Mr. Zapruder, who now is
9 deceased. In 1978, LMH Company placed the original
10 film in the National Archives under a storage
11 agreement. LMH Company believes today that it
12 currently possesses legal title to this film that is
13 now located in the National Archives.

14 Although the public does not now have access
15 to the original film, this would not necessarily change
16 if the U.S. Government were to have -- have possession
17 rights over the original film. The Archives keeps the
18 film in cold storage at what I understand to be 25
19 degrees Fahrenheit in archivally-sound conditions. The
20 original film, due to shrinkage, cannot now be shown on
21 a standard motion picture projector.

The possible uses of the original today would

1 thus be presumably limited to forensics examinations of
2 the film as well as to making master copies of the
3 film, either internegatives or interpositives of the
4 film. At the Archives today there are slide copies of
5 the film that are available for examination. Copies of
6 individual frames as well as the film itself are widely
7 available to the public in books, magazines, in videos,
8 motion pictures, and there is even a version on CD-ROM.

9 One of the questions the board needs to
10 consider under the JFK Act is whether the Zapruder film
11 is an assassination record within the meaning of the
12 Act. The Review Board's authority, of course, derives
13 from the JFK Act which was passed by Congress in 1992.
14 The JFK Act itself provides for the "expeditious public
15 transfer" of "assassination records" to the National
16 Archives. So the question is raised, is this Zapruder
17 film an "assassination record" that should be in the
18 JFK Collection at the Archives and essentially, should
19 that be Federal Government property rather than the
20 property of private citizens.

21 To some extent, the statute answers at least

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part of this question. Under JFK act an assassination

1 record includes, among other records, any -- any
2 "record that is related to the assassination of
3 President John F. Kennedy that was made available for
4 use by the Warren Commission." The record reflects
5 that the Zapruder film -- the original Zapruder film
6 was explicitly and specifically requested by the Warren
7 Commission and the Warren Commission and the staff were
8 shown versions of the -- or shown the original Zapruder
9 film.

10 This would seem to suggest that within the
11 statutory definition, the Zapruder film qualifies as
12 being an assassination record. Moreover, the board
13 independently, from prior statements, believes that the
14 original film is an assassination record within the
15 meaning of its own regulations.

16 Now, at this public hearing today there are
17 things that I understand the board will be doing and
18 things they will not be doing. In order that there be
19 some clarity, I will try to suggest some of the things
20 that I think the board is not going to be doing.

21 The board is not seeking comment from the

public regarding whether the Zapruder film is one of

1 the most important records of the assassination. The
2 reason the board would not be considering this is that
3 is a foregone conclusion that that is the case. The
4 board already acknowledges this. Nor is there a
5 question whether the Zapruder film is an assassination
6 record under the JFK Act, as I have just outlined. Nor
7 does the board question whether in the ideal world
8 where no costs are involved, whether the Zapruder film
9 ought to be possessed by the U.S. Government and placed
10 in the Archives.

11 The board is also not undertaking any
12 examination regarding the authenticity of the Zapruder
13 film although it is aware of the controversy
14 surrounding those allegations. The board also is not
15 holding a hearing on whether LMH Company possesses
16 legal title to the Zapruder film. That would -- to the
17 extent that that is a controversy, that would be a
18 matter for the courts. Similarly, the board is not
19 evaluating the validity of LMH Company's copyright
20 interests in the film. That also would be a matter for
21 the courts.

Rather, the core question for the board today

1 is whether it should undertake an action that would
2 effect a taking, in constitutional terms, of the
3 original film or whether the board should seek a
4 negotiated arrangement with the Zapruder family, now
5 LMH Company, that would attempt, to (A) make
6 high-quality copies of the Zapruder film easily
7 available to the public for the first time; (B) provide
8 forensic testing of the film to determine in part any
9 questions related to authenticity; and (C) would ensure
10 the U.S. Congress has an option, if it so chooses, to
11 purchase the film.

12 The choice, then, for the Review Board is, to
13 some extent, should the film be taken and transferred
14 to the JFK Collection in the Archives or should a
15 negotiated arrangement be made that would include some
16 terms that would include making copies of the film
17 easily available to the public.

18 I would like to outline the parameters of the
19 two options before to the board. The first one is the
20 taking option. The first witness who will following
21 me, Professor Brauneis, will discuss some of the

constitutional and statutory issues involving how the

1 Federal Government takes private property for public
2 use. I am in somewhat of a quandary in that I am the
3 general counsel for the board and the board is entitled
4 to my confidential legal advice, which I have attempted
5 to provide, and I believe it would be inappropriate for
6 me to express my own opinions on this matter in this
7 particular forum. But Professor Brauneis will examine
8 those issues from his perspective.

9 Should the Review Board believe that a taking
10 is appropriate, it would instruct, presumably, the
11 Archivist of the United States that the Zapruder should
12 be transferred to the JFK Collection at the Archives.
13 To what extent that is a paper transfer, the film would
14 continue to be stored in exactly the same location.
15 But rather than having the LMH Company be recorded as
16 the owner, the U.S. Government would be the owner of
17 the film.

18 Although there are several possible
19 developments that might follow that instruction by the
20 board, one likely scenario is that LMH Company would
21 then sue the Federal Government in the United States

1 for having been deprived of its property. The
2 Department of Justice would then presumably represent
3 the United States and the Review Board in any following
4 litigation.

5 If the Court were to agree that the Review
6 Board has the authority to transfer the film, the Court
7 would then, presumably, determine the value of the film
8 in order that LMH Company be compensated out of funds
9 from the U.S. Treasury. Under this particular scenario
10 Congress would not need to make any particularized
11 appropriation of funds for the film, although payments
12 nevertheless are derived from funds appropriated by
13 Congress for this litigation fund.

14 If the board were to attempt a negotiated
15 arrangement option, it would likely follow along the --
16 likely contain the following provisions. First, LMH
17 would agree to make the best available copy of the
18 Zapruder film using the best available technology --
19 best available current technology. The high-quality
20 copy would include images that are between the sprocket
21 holes on the original film. A digitized version of

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this film or of the original film could then be made.

1 Second, LMH would agree to make this
2 high-quality copy available to researchers for their
3 individual use. Thus, to the extent that LMH has a
4 perfected copyright interest in the film, they would
5 agree to license, to some extent, the use of the
6 high-quality images.

7 Third, although it would be -- copies would
8 be available at cost to the public from the Archives,
9 LMH would nevertheless continue to possess whatever
10 copyright interests it would have in the film. Thus,
11 although members of the public could then easily
12 purchase for the first time high-quality images of the
13 film for their individual use, the license agreement
14 with the Archives would not provide that members of the
15 public would be entitled to make subsequent commercial
16 use of the film. So a member of the public could
17 request the film, obtain a copy of it, but they could
18 not then, under this arrangement, go out and
19 redistribute that or put it into a movie or put it into
20 a book and make profits on it.

21 Fourth, Congress would be given an option to

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purchase the film. Such an option could be formulated

1 in different ways. Nevertheless, an agreement would
2 provide that Congress would be given an opportunity to
3 purchase the film and place that in the Archives, or
4 have the government have permanent possession of it in
5 the Archives.

6 Finally, the basic term that would likely be
7 involved in such a negotiated agreement, the government
8 would be able to conduct all appropriate forensics
9 tests of the original film, including any and all tests
10 that would reasonably answer the question of the film's
11 authenticity.

12 I think that there are a few questions the
13 board ought to consider from the experts who have been
14 called here today and from other members of the public
15 who will be speaking and I would like to give some
16 suggestions of the sorts of questions that would be
17 appropriate.

18 First, in regard to the camera-original film,
19 does the original Zapruder film possess an intrinsic
20 historical value such that the Review Board should take
21 action to ensure that the original is kept at the

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National Archives regardless of costs?

1 Second, what harms my befall the original if
2 the government does not acquire the film, for example,
3 could a private purchaser purchase the film from LMH
4 Company, cut the film into individual frames and then
5 sell it to the public, thus destroying the integrity of
6 the original film?

7 Another question: is the original film a
8 wasting asset in the sense that it has deteriorated
9 over time and that it will continue to deteriorate over
10 time, so that conceivably, a copy of the film right now
11 might be worth more for its evidentiary value than
12 would the original film be 20 years from now? That is
13 a question for the experts.

14 Over time will a copy -- the next question,
15 could a high-quality copy of the film which includes
16 images between the sprockets satisfy all of the
17 legitimate needs of researchers and scholars, and if
18 not, which specific needs would not be satisfied by a
19 copy of the original?

20 Another question is could such needs be
21 addressed by the government's conducting a forensics

examination. Could a panel of experts be assembled who

1 could look at the the original film and make
2 determinations regarding either speed at which the film
3 went, the significance of the images between the holes
4 and other technical questions that have come up
5 regarding the Zapruder film?

6 Finally in this area there is the question of
7 whether possible future technology not known today
8 using the original film may be able to answer questions
9 that cannot be answered through current technology.

10 Questions that would seem to be also
11 appropriate for the question of whether there is the
12 statutory authority to take the film are as follows:

13 What actions may the Review Board legally and
14 properly take in order to ensure that the public has
15 access to the original and to high-quality copies of
16 the film?

17 If the board believes that the film should be
18 owned by the U.S. Government, should the taking be by
19 an action of the Review Board or is that an action that
20 should be taken by Congress?

21 Another question is whether the Review Board,

under the JFK Act, has as the legal authority to take

1 the Zapruder film.

2 Another question is what are the possible
3 consequences of the board's attempting to take the
4 original film? What are the possible consequences of
5 the board's not attempting to take the original film?

6 Another question which may be of interest to
7 the board is what monetary value should be attached to
8 the film? Now, I should say to the public here that
9 the board has received, in confidence, monetary
10 appraisals of the Zapruder film that were conducted by
11 experts retained by the Department of Justice and by
12 LMH Company in cooperation with each other. So the
13 board has had some information which is currently
14 protected on some valuations, which the board is free
15 to either accept or reject in its best judgment.

16 To say that the Zapruder film is invaluable
17 or is important does not really answer the question of
18 what monetary value should be attached to the film. If
19 the film were taken by the JFK Act or if Congress were
20 to purchase the film, the legal owner would still need
21 to be compensated. How much should the government pay

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to compensate the original owner?

1 Finally, is there a cost beyond which the
2 government should not take the original? Should it be
3 that up to a certain amount it would be appropriate for
4 either the Review Board or the Congress to take the
5 film but beyond that amount it would not be
6 appropriate?

7 Those are all questions confronting the
8 board. And finally, the question that the board should
9 consider is whether the board, if it decides not to
10 take action to take the Zapruder film -- should it urge
11 Congress to take the film?

12 Thank you very much.

13 JUDGE TUNHEIM: Any questions or comments for
14 Mr. Gunn while we have him up here?

15 MR. BUNN: That is my favorite kind of
16 question.

17 JUDGE TUNHEIM: Thank you. As usual, you
18 have raised a lot of questions for us to ponder today.

19 Next, we would like to hear from Robert
20 Brauneis who is Associate Professor of George
21 Washington University Law School and an expert on the

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takings issue. Welcome, Professor Brauneis.

1 STATEMENT OF ROBERT BRAUNEIS

2 MR. BRAUNEIS: Thank you, Mr. Tunheim.

3 As I understand it, the Review Board is
4 interested in my opinions about a number of issues
5 related to the exercise of the government's eminent
6 domain power -- its power to force private individuals
7 to give up property -- over this camera-original film
8 taken by Mr. Zapruder. Especially the issue whether
9 the Records Collection Act effects a taking of the film
10 for which just compensation is due or whether it
11 authorizes the Review Board to effect such a taking. I
12 am going to direct my prepared comments to that narrow
13 issue of legal authorization and then any other broader
14 issues that can be explored later in questions.

15 Let me say at the beginning that there is
16 really not any constitutional question here. Under
17 settled law, Congress has eminent domain powers over
18 both real estate and personal property in the United
19 States, presumably including the Zapruder film. Nor do
20 I think that there is any question that if the Review
21 Board were to direct the Archives to place the film in

the JFK Collection, that that would constitute a taking

1 for which just compensation is due.

2 The issue rather, is a statutory one, and
3 that is, given that Congress had the power to exercise
4 eminent domain, did it do so or did it authorize the
5 board to do so in the Records Collection Act.

6 Having closely examined the text of the
7 statute and the legislative history of the statute, my
8 conclusion is that this is a close call. There are
9 arguments to be made on both sides, and, therefore, I
10 think it would be most helpful for me today to outline
11 the arguments on either side and then leave the
12 difficult questions to you.

13 Let me first consider the portions of the
14 text and the legislative history that weighed in favor
15 of the exercise of eminent domain, or of the taking of
16 the film.

17 Mr. Gunn has already covered some of this
18 material in his testimony. There are two major
19 operative provisions in the Act. They are sections
20 5(c)(1) and 5(d)(3). They both use the terms
21 "assassination record" and "possession."

Section 5(c) (1) directs each government

1 office to review, identify and organize each
2 assassination record in its custody or possession for
3 eventual transmission to the JFK Collection.

4 Section 5(d)(3) directs the Archives to place
5 in the JFK Collection all, again, assassination records
6 which are in its possession and which have been
7 publicly available in their entirety without redaction.

8 Mr. Gunn has suggested that it is not really
9 a question before the board today whether the Zapruder
10 film constitutes an assassination record, but I guess
11 just to add to that, I think I would point out that
12 were a court -- if a court were in the position of
13 having to decide this issue, I think that there is a
14 very good chance that it would find that the Zapruder
15 film is indeed an assassination record.

16 So, putting aside for the moment other
17 provisions of the JFK Act, these two operative
18 provisions would indeed seem to mandate the
19 transmission of the Zapruder film to the JFK
20 Collection.

21 If the issue of whether it is an

assassination record is put to one side, the only other

1 issue is is it -- was it in the custody or possession
2 of either the Archives or some other government agency,
3 and I think there is a pretty good argument to be made
4 that it was. So that is the major part of the text of
5 the statute which ways in favor of the finding that the
6 statute has taken the film.

7 The other major factor, it seems to me, that
8 ways in favor of a taking is the text of the Act and
9 particularly all of the statements in the legislative
10 history of the Act that disclose the purpose of the
11 Act. The Senate report on the Act notes that in the
12 eyes of the public each investigation and inquiry into
13 the assassination of President Kennedy served to raise
14 additional questions about the assassination. The
15 Senate report states that the JFK Act was a result of
16 the recognition by Congress and the executive branch
17 that the records related to the assassination of
18 President Kennedy be fully disclosed.

19 The Zapruder film, as Mr. Gunn has already
20 stated, is such an important record of the
21 assassination that it may well be the case that failure

to maintain a government possession of the

1 camera-original or to disclose it to the public might
2 well undermine the public confidence -- and there I am
3 quoting again from the Senate report -- that it
4 identifies as one of the underlying principles of the
5 Act. So there is the gist of the case in favor of a
6 taking.

7 Let me turn to the other side now, however,
8 and look at the text and the legislative history and an
9 interpretive principle that the courts might apply that
10 weigh in the opposite direction.

11 It seems to me, having looked at the Act,
12 that the most important piece of the text may be
13 section 11(a) of the Act. Section 11(a) creates an
14 exception to those operative sections I was talking
15 about earlier, it creates an exception to this Act's
16 requirement that all assassination records in the
17 possession of government agencies be transmitted to the
18 JFK Collection and publicly disclosed.

19 Section 11(a) in particular says that the
20 Act's requirement will not apply when it conflicts with
21 -- and here I quote the Act -- "deeds governing access

to or transfer or release of gifts and donations of

1 records to the United States Government."

2 So, in other words, if someone has given
3 records to the Federal Government, and they've placed
4 certain restrictions on them as to transfer of those
5 records, or release of those records, the Review Board
6 is directed by the Act to respect those restrictions.
7 One could interpret this exception as a result of a
8 determination by Congress that when private individuals
9 have retained certain rights in records that are in
10 possession of the government, the Act shouldn't be
11 applied in such a way as to violate or diminish those
12 rights.

13 My understanding is that the Zapruder film
14 was delivered to the Archives under a storage agreement
15 that gives its owners the right to retrieve it from the
16 Archives. This storage agreement is not a deed in the
17 narrow sense of deed within section 11(a), which gives
18 rise to another ambiguity that the board would have to
19 deal with. Although it is not a deed in the narrow
20 sense of that term, it is an agreement which grants
21 limited rights to the Archives, and which reserves

22 rights in a private grantor. Indeed one might say it

1 reserves greater rights in the private grantor than a
2 restricted deed would.

3 The JFK Act grants the Review Board the power
4 to issue regulations interpreting the terms of the Act
5 and I think it is likely that a Court would uphold a
6 broad interpretation of "deed" as covering any
7 instrument under which possession of or title to a
8 record was transferred to a government office. So I
9 think if the Review Board were to come to the
10 conclusion that it thought it appropriate to define
11 "deed" broadly, that a court would probably uphold that
12 broad definition. That, of course, would mean then
13 that the Review Board would not be mandated by the Act
14 to transfer this -- the Zapruder film to the JFK
15 Collection.

16 Significantly, the Senate report on the JFK
17 Act, the Records Collection Act, states that if the
18 Review Board locates assassination records that were
19 given to the government subject to restrictions, it
20 should -- and here I quote the Senate report -- "where
21 possible seek the waiver or necessary permission to

open the records to the American public." This

1 language doesn't seem to contemplate a taking in which
2 the Review Board would force public disclosure and pay
3 just compensation to the donors for breaking their
4 restrictions, rather, it seems only to contemplate that
5 the board would seek a voluntary waiver of the
6 restrictions on the part of the donors.

7 Now, aside from Section 11(a), the Act also
8 contains several references to "Government records," a
9 term that shows up in a number of provisions in the
10 Act, which could be read as suggesting that the Act
11 applies only to records owned by the government. The
12 term "Government records" applies in the "findings and
13 declarations" portion of the Act, and it also appears
14 in a number of its operative provisions.

15 Perhaps most significantly, Section 4(a)(1)
16 of the Act provides that the JFK Collection at the
17 National Archives "shall consist of record copies of
18 all Government records relating to the assassination of
19 President John F. Kennedy." "Government records,"
20 however, is an undefined term in the Act, and Section
21 4(a)(2), the immediately subsequent section governing

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-- describing in detail the contents of the JFK

1 Collection, says that that collection will include all
2 assassination records that the Act requires it to
3 include.

4 Now, the term "assassination record," of
5 course, is defined, and I think it does not appear to
6 require government ownership and my guess here is that
7 the term "government record" is a remnant of an earlier
8 stage of the process of drafting the Act, probably
9 should have been wholly replaced by "assassination
10 record" and one of the ways one might render various
11 portions of the Act consistent would be to interpret
12 government record as meaning any record in the
13 possession of the government, not where title is owned
14 by the government.

15 In addition to these two items of text that
16 the JFK Act does contain, it might be notable that the
17 Act is missing any reference to eminent domain or just
18 compensation. And in this respect one might contrast
19 the Act with the so-called Presidential Recordings and
20 Materials Preservation Act, the famous act concerning
21 the presidential papers and the tapes made by President

1 This act, the PRMPA, in its acronym form, is
2 similar in some respects to the JFK Act. It also
3 requires any Federal Government employee in possession
4 of certain records, here relating to the Nixon
5 presidency, to deliver them to the Archivist of the
6 United States, who is directed to retain those records.
7 But the PRMPA expressly recognizes that the actions it
8 mandates may amount to a taking for which just
9 compensation is required.

10 There is a section in the PRMPA which says
11 payment of just compensation shall be made from the
12 general fund of the United States Treasury if a court
13 holds "that any provision of [the Act] has deprived an
14 individual of private property without just
15 compensation." So in the case of PRMPA, closely
16 similar operative provisions, but a clear indication
17 from Congress that it realized a taking might be found.

18 My contrast to the JFK Act, of course,
19 contains no provision suggesting that Congress
20 contemplated that the Act might effect a taking. The
21 legislative history of the Act reinforces the

impression that Congress didn't contemplate that the

1 Act might require the payment of just compensation.
2 For example, the Senate report on the Act contains a
3 section evaluating the regulatory impact of the
4 legislation. That section declares that the Act "would
5 not result in any additional regulation to any
6 individuals and businesses," and therefore would have
7 no economic impact on any individuals or businesses.

8 The Senate report also contains an analysis
9 undertaken by the Congressional Budget Office of the
10 cost of implementing the Act, and that cost estimate
11 does not include any amount for paying awards and just
12 compensation to individuals whose private property is
13 taken by the Act.

14 And then finally, having taken a look at the
15 text of the statute and the legislative history, let me
16 just point out one interpretive presumption that courts
17 use that may also weigh in favor of a finding that the
18 Act does not effect a taking.

19 The Supreme Court has stated that the power
20 of eminent domain, the power to force private
21 individuals to give up their property "must be given in

express terms or by necessary implication." So it is a

1 kind of rule that says if you want to use the power of
2 eminent domain, you have to do it clearly.

3 It is possible to argue that, if the JFK Act
4 indeed mandates transfer of all assassination records
5 in government hands to the JFK Collection, and the
6 Zapruder film was an assassination record, then we
7 could say it is a necessary implication that eminent
8 domain power will be exercised in making the transfer
9 if it turns out that the Zapruder film is private
10 property. The canon, however, or interpretive
11 presumption, indicates that a court, if faced with
12 equally balanced conflicting evidence about whether a
13 statute directs actions that might or might not amount
14 to a taking, would likely decide that the statute did
15 not require such actions.

16 So, in sum, there is support on both sides of
17 this takings issue, and I would, for one, find it
18 difficult to predict what a court would do. And I am
19 happy to answer any questions that you might have.

20 JUDGE TUNHEIM: Thank you Professor Brauneis.

21 Questions by members of the board?

MS. NELSON: I have a question. It has been

1 of great interest, this question of possession, and it
2 may very well be, for example, that the Congress was
3 not as aware of the fact that the Archives stores
4 things and so uses the word "possession." Possession,
5 in your view, then, means what? Does it mean that the
6 Zapruder film may or may not -- because you just
7 finished saying that if it turns out that the Zapruder
8 film is not in the hands of the government -- is it
9 your opinion then that the film is or is not in the
10 possession of the Federal Government?

11 MR. BRAUNEIS: I think it is most likely that
12 a court would find that the film is in the possession
13 of the Federal Government. It is not entirely the case
14 that Congress was completely unaware, I think, that the
15 Archives stores items, although the material in the
16 legislative history is sort of scant, but the Archivist
17 did mention deposit agreements in the legislative
18 history. So there is some evidence that Congress may
19 have been aware of that.

20 JUDGE TUNHEIM: Can you point to precedents,
21 Professor Brauneis, where the United States Government

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has taken artifacts, so to speak, from private

1 individuals using its eminent domain power?

2 MR. BRAUNEIS: Well, I think the most famous
3 recent example is the act under which the Nixon tapes
4 and papers were taken from President Nixon and retained
5 by the government. The District of Columbia Circuit,
6 the Federal Court, decided that indeed that act did
7 constitute a taking and ordered that the government pay
8 just compensation for those records, and those were
9 tapes and papers and all sorts of things that pertained
10 to the Nixon administration. So that is a very clear
11 example recently of the taking of certainly a larger
12 bulk of materials than is involved here.

13 MR. HALL: Mr. Brauneis, let me ask you,
14 would this case or this set of circumstances be
15 different if in fact the film were not in the Archives?

16 MR. BRAUNEIS: I think it would. I guess
17 that relates, in part, back to Ms. Nelson's question
18 about possession. If the film were not in the
19 Archives, then there is a much greater issue about
20 whether any of the operative provisions in the Act
21 mandate the transmission of the film to the JFK

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Collection. It is not in the possession of any

1 government agency and I think it most likely under
2 those circumstances that the Act would not mandate
3 transmission of the film.

4 MR. HALL: So the distinction with regard to
5 possession turns out, at least for purposes of thinking
6 our way through the statutory understanding, turns out
7 to be significant?

8 MR. BRAUNEIS: That is correct.

9 MR. HALL: Is there anything in the
10 legislative history that would suggest to you that
11 those who framed the statute intended that the Zapruder
12 film be exempted from being included as an
13 assassination record? And I pose that question in the
14 context of, at least in one instance, that with regard
15 to the autopsy photographs, they were fully capable of
16 designating a specific category.

17 MR. BRAUNEIS: There is nothing in the
18 legislative history that specifically singles out the
19 Zapruder film -- there is no mention of the film by
20 name -- that suggests that Congress was thinking of
21 exempting it from the Collection. The only indication

in the legislative history is testimony of the

1 Archivist of the United States which may have resulted
2 in the placement of Section 11(a) in the Act, the
3 broader exception that I was taking about earlier.
4 That exception for restrictions in gift deeds was not
5 in the original drafts of the Act and the Archivist
6 testified that failure to put such an exception in the
7 Act would likely result in fewer donations of records
8 and therefore, there should be such an exception. And
9 one of the Archive's position statements actually
10 mentions deposit agreements as well as gift deeds. But
11 as we know it, Section 11(a) only refers to gift deeds.

12 MR. HALL: Let me, if I may, Mr. Chairman,
13 press just a little bit on this particular issue and
14 raise with you the question of whether or not Section
15 11(a) is directed at the question of how materials that
16 are in the possession of can be used and access granted
17 and rights to be able to view them would be structured,
18 between the Archives and the person who is making a
19 donation or contribution, as against the question of
20 removal of the material altogether from the possession
21 of the government and returning it to the individual

22 who originally donated it.

1 MR. BRAUNEIS: It is possible that Congress
2 did have in mind that sort of distinction. Section
3 11(a) mentions transfer as well as disclosure, so they
4 may have been concerned about physically where the
5 items were. But it certainly is the case that if the
6 item was indeed donated to the Federal Government, then
7 one would presume that it remains in the possession of
8 the Federal Government, and as you say, the issue is
9 simply where is it in the government's possession, when
10 will it be disclosed, to whom and under what
11 conditions.

12 MR. HALL: One final question, if I may. And
13 that is, if I could -- and I am not sure if this is
14 appropriate, and that is where I need your help, a law
15 professor's help -- what if we took our understanding
16 of this issue and did not see it initially as a
17 question of taking of eminent domain, although that
18 matter may well enter into the discussion at some other
19 point, but viewed it rather as a question of bailment.
20 That is, the Zapruders had given the film to the
21 Archives, the Archives were acting in the capacity of a

22 bailee, in the set of circumstances that were governed

1 by then existing rules. The rules, however, in the
2 course of the time that the material was held, the
3 bailment arrangement had changed.

4 Would it not be possible then that the
5 Archives would find itself in some conflict and that it
6 might, and the government might well in that capacity
7 of acting as a bailee, act in favor of retaining the
8 material, given the fact that it is not private in the
9 strict sense of the word but rather is in fact in
10 possession and it has now become an assassination
11 record, and therefore, the Archives could do what it
12 did, which is to say we are not going to return the
13 material because we cannot do that in our capacity,
14 acting in this bailment capacity.

15 MR. BRAUNEIS: I think, in fact, that is the
16 other side of Section 11(a). Section 11(a) is titled
17 "Rules of Construction," and it says that the mandates
18 in the other operative provisions of the Act shall
19 supersede any other statute and any other common law
20 doctrine, and that is the doctrine of bailment, that
21 might direct a government agency to do something

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different, and the only exception that it makes is for

1 gift deeds that have certain restrictions in them. So
2 if Section 11(a) on the one hand opens up this
3 possibility of gift deed, on the other hand it
4 forecloses other possibilities and says common law
5 doctrines shall not take precedence over this Act.

6 MR. HALL: Thank you very much.

7 MR. GRAFF: Mr. Chairman, if I might ask
8 Professor Brauneis to come back to the point that Judge
9 Tunheim was on before, about whether there is a
10 precedent for the handling of something like this. Was
11 this film transmuted into an assassination record, and
12 therefore, did it become like a document in the Nixon
13 case or is there something unique about this, like the
14 Liberty Bell or Betsy Ross's flag or what, that
15 requires a special kind of legal treatment?

16 MR. BRAUNEIS: I don't think that the Act
17 certainly has anything to say about its Liberty Bell
18 status as affecting its legal status. The Act, of
19 course, defines assassination record very broadly to
20 include not only paper but film and sound recordings
21 and so on, and the Zapruder film may not be the only

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record within that definition that has gained some sort

1 of iconic status over the years. So I don't really
2 see--

3 MR. GRAFF: But we have not identified
4 another with this kind of iconic status?

5 MR. BRAUNEIS: I suppose my answer remains
6 the same. I don't really see that that particular
7 aspect changes things greatly, legally.

8 MR. JOYCE: Professor Brauneis, is there any
9 support for the proposition that the legislation, in
10 designating assassination records as including all
11 exhibits before the Warren Commission, and since the
12 Zapruder film was shown to the Commission, is there any
13 support for the proposition that it is already an
14 assassination record by the passage of the Act?

15 MR. BRAUNEIS: Oh, I think that is quite
16 possible, yes.

17 Of course, the Act also grants the power to
18 the board to define the terms of the Act, and you have
19 taken that power and defined "assassination record."
20 There may well be outer limits to that power though,
21 and if you were to attempt to use your power to define

"assassination records" so narrowly that it excluded

1 the Zapruder film or excluded other records that came
2 before the Warren Commission, that a court might find
3 that you had exceeded the scope of your delegated
4 powers under the Act, that when it gave you some leeway
5 to define terms, it didn't give you leeway to say that
6 a horse was a cow.

7 JUDGE TUNHEIM: Just to clarify that issue a
8 little bit more, is it possible to argue the Act has
9 already effectuated a taking of this particular
10 artifact, and therefore there is essentially no
11 decision before the board?

12 MR. BRAUNEIS: I think it is, that's right, I
13 think it is, I think it is.

14 MR. HALL: To go back again, there is a
15 distinction to be drawn here between a film of the
16 assassination that reposes, or is in repose in the
17 refrigerator of the Archives, and a film that is held
18 in someone's desk in Dubuque?

19 MR. BRAUNEIS: I think that is a very
20 important distinction.

21 MS. NELSON: Of course, the LMH Company, of

course, could challenge this view, in which case it

1 will be taken to the Court of Claims, presumably.

2 MR. BRAUNEIS: That is correct.

3 MS. NELSON: It seems to be, well it is an
4 interesting thought that the Act has already decided
5 this issue for us -- is that really what you meant? We
6 keep pushing that because that, of course, is a very
7 interesting new idea that you have brought in today.

8 MR. BRAUNEIS: That is really what I meant.
9 Again, as I suggest, although the Act gives the power
10 to the Review Board to issue interpretive regulations,
11 the court might find there are limbits to that power,
12 and if the film is an assassination record that it was
13 in the possession of certain government agencies, then
14 the Act just says it shall be transmitted to the JFK
15 Collection.

16 MS. NELSON: And it was part of the Warren
17 Commission.

18 MR. BRAUNEIS: That is correct.

19 JUDGE TUNHEIM: I am going to ask you one
20 last question. You have examined a lot of cases in
21 which takings have occurred, and in which court's have

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determined value eventually for the material that was

1 taken. Any thoughts you have for us on what the
2 financial cost to the taxpayers might be in a case like
3 this one?

4 MR. BRAUNEIS: Well, the measure of damages,
5 or the measure of compensation generally is fair market
6 value.

7 JUDGE TUNHEIM: Does that include commercial
8 value?

9 MR. BRAUNEIS: That certainly does. It is
10 what the property would bring on the open market, if it
11 were, say, put up for an auction. That is the measure
12 of damages. I certainly can't speculate as to what
13 that would be. There are other appraisal experts, I am
14 sure, who would have their say about that. I suppose
15 the only one other thing I might mention is there could
16 be a separate value -- and perhaps Mr. Gunn has already
17 adverted to this -- could be a separate value placed on
18 the physical object itself, the camera-original film,
19 and other rights associated with that, such as
20 copyright, and so you might easily place one component
21 of fair market value as the fair market value of the

original as an artifact, the other component is other

1 rights such as copyright.

2 MR. JOYCE: One quick question in pursuance
3 of that. Is there precedent for a taking to transfer
4 title but to leave copyrights and other rights similar
5 to that with the original owner?

6 MR. BRAUNEIS: I have not come across a case
7 in which that has been done but I would not find it all
8 out of the ordinary given the structure of copyright
9 law which presumes that copyright is a completely
10 separate set of rules than the rules about title over
11 the physical object.

12 JUDGE TUNHEIM: Thank you very much,
13 Professor Brauneis. We appreciate your joining us
14 today.

15 Next we are going to hear from Jim Lesar, who
16 is the President of the Assassination Records and
17 Research Center. Welcome, Mr. Lesar.

18 MR. LESAR: Good afternoon, Mr. Chairman.

19 JUDGE TUNHEIM: We are happy to have you back
20 again to advise us today.

21 STATEMENT OF JAMES LESAR

MR. LESAR: Thank you, it is a pleasure to be

1 here. The questions that the board has asked that are
2 revolving around eminent domain are not really within
3 my expertise, so I face them with some trepidation,
4 particularly after listening to Professor Brauneis's
5 very scholarly exposition pointing up all of the
6 aspects of the statutory language that bear on the
7 questions. I would -- I have a somewhat different take
8 on a couple of matters that may have some bearing on
9 the ultimate issues.

10 First, I think that while it is important
11 always to analyze the bits and pieces of a statute,
12 that those bits and pieces have to be considered in
13 light of the overarching purpose of the statute, and
14 the JFK Act was clearly intended to accomplish a couple
15 of things that are set forth in Section 2 of the Act,
16 "Findings, Declarations and Purposes." And the very
17 first finding, declaration and purpose is that Congress
18 found that all government records related to the
19 assassination of President John F. Kennedy should be
20 preserved for historical and governmental purposes.

21 I think it is very important that the board

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take actions consistent with that purpose and not lose

1 sight of the forest here. I also have a thought
2 regarding whether or not the JFK Act has already
3 effected a taking and it is my view that with respect
4 to the copyright in the film, that the JFK Act has in
5 fact effected a taking by virtue of the very section
6 that the professor has cited, Section 11(a), which
7 provides that the JFK Act in effect overrides all prior
8 statutes.

9 The JFK Act, having been passed subsequent to
10 the copyright act, I think that it overrides the
11 copyright act, and so, the Congress has itself effected
12 a taking of the copyright. Now, that has implications
13 certainly for the value of the film because the value
14 of the -- commercial value of the film is hardly
15 seperable from the copyright in the film.

16 And it also has implications in terms of
17 public access because under both the JFK and the
18 Freedom of Information Act, if it is an assassination
19 record, and I think unquestionably it is, then the
20 public has a right to have copies of the film,
21 certainly at no more than cost. And under the waiver

provisions of both acts, the public may also in certain

1 instances be able to get them without cost.

2 So that leaves you with the question of the
3 value of the actual physical copy, the camera-original,
4 as divorced from the copyright. And it seems to me,
5 (1) that value is greatly diminished. It certainly is
6 important to have it in the Collection for various
7 reasons.

8 The JFK Act -- Section 4 of the JFK Act also
9 provides that the Archivist in establishing the
10 Collection is to ensure the physical integrity and
11 provenance of all records. I think it is difficult if
12 not impossible to ensure the integrity of the film and
13 its provenance so long as it remains subject to the
14 whim and caprice of private ownership.

15 So I would argue that -- and it seems to me
16 also somewhat ludicrous to argue that Congress did not
17 intend the most important and unique piece of evidence
18 to be in the Collection, to be fully accessible to the
19 public, and I think it needs to be subject to
20 government ownership in order to not only to preserve
21 it but to make sure that with advances in technology,

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the public may have access to the information provided

1 by any advances in technology that can take place.

2 Now, as to one -- there are various scenarios
3 as to how this matter could resolve itself. I have
4 suggested that in fact the Act has already effectuated
5 a taking, and the implication of that is that someone
6 who wanted to put that to the test can file suit under
7 the Freedom of Information and JFK Acts, and seek a
8 court resolution of it.

9 There have been previous attempts to ensure
10 that the Zapruder film be made part of the public
11 dialogue on the Kennedy assassination and that history
12 has first, been the Bernard Geis Associates case, which
13 I think professor Josiah Thompson will inform you about
14 later. The Court ruled that the copies that he made of
15 it for use in his book "Six Seconds in Dallas" were
16 subject to the "fair use" doctrine.

17 Secondly, Professor Melville Nimmer, a noted
18 copyright scholar, and First Amendment scholar,
19 proposed that in a very certain narrow class of cases
20 the First Amendment interest in enlightened democratic
21 dialogue overrides the copyright interest. He gave two

examples of that. One, the example of the famous

1 photographs of the My Lai massacre. The second, the
2 Zapruder film. And in his opinion it would be
3 unconscionable that the copyright interest would
4 supersede the overwhelming public interest that could
5 not be fulfilled in any other way but through access to
6 the photographs.

7 I think, if I am correct, if the JFK Act has
8 effectuated an expropriation of the copyright, then it
9 would seem bizarre to hold that Congress did not also
10 intend that the original, camera-original, would not be
11 in the possession of the government. For one thing, it
12 would mean that future requesters would not be able to
13 take advantage of advances in technology to request the
14 newly available information.

15 Those are basically my thoughts. I will be
16 happy to answer any questions, if I can.

17 JUDGE TUNHEIM: Let me ask you a question,
18 Mr. Lesar. You were active in the passage of this act,
19 and testified before the Congress, quite active, as I
20 recall. Why don't you think the Congress specifically
21 mentioned the eminent domain issue in the Act?

MR. LESAR: I have no idea. I had an input

1 into the Act but not into that part of it. I can only
2 say that when I saw Section 11, my immediate reaction
3 was, that takes care of the Zapruder film.

4 MS. NELSON: Mr. Lesar, you heard -- we all
5 heard Professor Brauneis say that -- acknowledge that
6 quite likely, the Court of Claims would have to hear a
7 case, that the LMH Company would in fact probably seek
8 money, seek payment. So part of our task is to perhaps
9 decide how much in fact the American people will be
10 out, taxpayers will be out, if we in fact decide to
11 take the film, under any of these conditions, say it is
12 part of the Act anyway.

13 How far up would you, as someone who has had
14 the Assassination's resources, and so many of the
15 documents, how high should we go? That is to say, it
16 is difficult to compare, but we know, for example, that
17 Bill Gates paid about \$20 million for the Leonardo da
18 Vinci Codex. How far should we go? Now, making an
19 assumption here that it is not already included. I am
20 making a different kind of assumption.

21 MR. LESAR: I don't know -- (1) I am not

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familiar enough with the calculations that would go

1 into that to make a very good guess as to it. More as
2 a personal reaction than as a legal matter, I would
3 think that the fair market value should be offset by
4 the very large sums of monies that have been paid out
5 in the past.

6 And I must say that what particularly
7 troubles me about the exercise, which I view as a
8 misuse of the copyright with respect to this film over
9 the past decades, is that it has -- I think it has
10 thwarted the intent of the copyright intention in the
11 Constitution, which I view as ordinarily intended to be
12 to be consistent with the First Amendment.

13 For 12 years after the assassination, the
14 American public did not get to see this film, and that
15 had a devastating impact on the history of the case,
16 delaying its reinvestigation, among other things, by
17 more than a decade. So I would hope that there would
18 be some recognition that the copyright holder has
19 already garnered an enormous windfall profit from this
20 film and would not put the taxpayers to any further
21 great expenditure of funds.

MR. HALL: What would your estimation be of

1 the amounts that the Zapruders have earned from the
2 copyright?

3 MR. LESAR: Well, I would say that it
4 probably would approach a million dollars, is my guess.
5 You start with 150,000 that we know about for certain.
6 There have been movie producers that paid, reportedly,
7 30 or \$40,000 and television producers and others. So
8 I would not be surprised if it approached that figure,
9 but I have no personal knowledge of it. I think that
10 that is something that the Review Board should try and
11 find out if it has to make a determination as to how
12 much should be paid for the film.

13 MR. HALL: Following up on the context of
14 Anna's question, would it be your judgment that -- and
15 let's assume for purposes of argument that the
16 copyright issue is not settled in the way that you
17 believe it should be -- is there any ceiling on what
18 the American people should pay?

19 MR. LESAR: I think there is obviously a
20 ceiling. There is a ceiling to everything short of
21 national survival. But where that ceiling is, I don't

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know.

1 MR. HALL: That is an interesting and
2 important issue here and so is the question of what
3 researchers and scholars might take from the Zapruder
4 film, either in matters of research or matters of
5 authenticity, given the controversy that surrounds the
6 film. Can you speculate for us at all as to what it
7 might mean to a researcher to have this original
8 available?

9 MR. LESAR: I think it means a great deal to
10 the research community. Remember that -- I cited some
11 of the findings of the purpose of this Act, but perhaps
12 the overriding purpose of the Act was to restore some
13 confidence in government. It is very difficult for me
14 to see how you can go to the assassination community
15 and say we have restored confidence in the ability of
16 the government to come to grips with this history and
17 yet we are leaving the single most important piece of
18 evidence in the hands of a private citizen. That seems
19 to me to be self-defeating. It can't be done.

20 MR. HALL: But the crux of that understanding
21 would be that a high-quality copy or a copy made of the

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Zapruder film before it got into trouble at Time-Life,

1 would not be as good as the original?

2 MR. LESAR: Well, it is not only the question
3 of the quality of the original, it is what happened to
4 the original, splicings that took place. There is a
5 history to the original that is important -- and let me
6 just allude to one other thing. The Act says it is not
7 only -- it refers to preserving it for historical and
8 governmental purposes. Now, of course, the odd thing
9 about this film is that it was not seized by the
10 government at the start. This is a criminal case,
11 effective criminal case of the highest magnitude, and
12 evidence is routinely seized in criminal cases and that
13 was not done here.

14 MR. HALL: If I remember my legal precedents
15 well, the rule with regard to seizure and maintenance
16 of evidence is a function of having a criminal
17 proceeding.

18 MR. LESAR: The fact that there wasn't is a
19 consequence of Oswald having been shot. But there is
20 still a possibility, remote though it may be, that at
21 some point there will be a criminal proceeding, and

then this provision that preserves it for governmental

1 purposes takes precedence. It is inconceivable to me
2 that at that point the government would not assert its
3 interest in the original. Court rules require
4 originals, record copies. There is also a provision in
5 the Act that refers to record copies, the obligation to
6 preserve record copies. The Zapruder film, the
7 camera-original, is the ultimate record copy in this
8 case.

9 MR. HALL: But if 20 years or 25 years from
10 now there is nothing there, what would -- would anyone
11 have any interest in the Zapruder film if in fact the
12 images that are there now --

13 MR. LESAR: If it completely deteriorates
14 into an amorphous mass, I suppose the answer is no.

15 MR. HALL: So it could look like a bad deal
16 to pay out a lot of money to lay claim to something
17 that may not exist in the future.

18 MR. LESAR: That is certainly a
19 consideration.

20 MR. JOYCE: I would like to follow on a
21 related path. You have mentioned in the course of your

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statement that you thoufht it was important to preserve

1 the film against the development of future
2 technological advances that could assist us in
3 understanding the event, and I am wondering if you
4 could, given your knowledge of the concerns in the
5 research community, if you could tell us what kinds of
6 information or what questions are currently focused on
7 the film as a piece of evidence concerning the
8 assassination and how future developments might assist
9 researchers understand the event.

10 MR. LESAR: As to the technological aspects,
11 it is beyond my ken. I am not a photographer and I am
12 not very well versed in computer science, so I do not
13 know what the potentials are with respect to computer
14 enhancement and other matters. I would suggest that
15 you might solicit the views of experts in those fields.

16 MR. JOYCE: My question was really the aimed
17 at questions that researchers would like to have
18 answers to.

19 MR. LESAR: One obvious thing which was
20 alluded to by Mr. Gunn in this presentation is the
21 material between the sprocket holes. About 20 percent

22 of the exposed surface of the original film falls

1 between the sprocket holes. It is not reproduced on
2 the film copies of the original. However, it can be
3 reproduced through slides. So it requires the original
4 in order to capture that information, and that, I
5 think, is certainly a priority in the research
6 community, is having a high-quality copy made of the
7 camera-original that will reproduce the material
8 between the sprocket holes. So that is one. Now,
9 there are other issues which I am less familiar with
10 but I hear rumblings of them in the hinterlands,
11 questions about authenticity of the film, and
12 alterations of the film, and so forth. I am not really
13 qualified to speak about those.

14 JUDGE TUNHEIM: One final question, Mr.
15 Lesar. Your point that you made earlier, that any
16 award of financial costs for taking of this film should
17 be offset by the costs that the family has made off the
18 film, and I understand that completely from a visceral
19 kind of reaction. Are you aware of any kind of cases
20 that would establish that principle that we can look
21 at?

MR. LESAR: No, I am not. However, I haven't

1 had any chance to research the issue. But I am not
2 aware of any.

3 Returning to Professor Joyce's question, some
4 of the other questions are the obvious ones that relate
5 to the sequence and timing of shots, the direction of
6 shots, where the wounds are located, the movements of
7 witnesses, the movements and reactions of Secret
8 Service personnel, Dallas Police Department personnel,
9 all of those things are of interest to the research
10 community.

11 JUDGE TUNHEIM: Thank you Mr. Lesar. We
12 appreciate your time.

13 Next, we will hear from Mr. Josiah Thompson,
14 who is an author, one of the early authors of a widely
15 read book on the assassination, "Six Seconds in
16 Dallas," I believe.

17 Mr. Thompson, thank you for joining us today.

18 STATEMENT OF JOSIAH THOMPSON

19 MR. THOMPSON: Thank you, Mr. Chairman, Dr.
20 Marwell, distinguished members of the panel. I do not
21 have a prepared statement but sitting here, I have had

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a few thoughts, on two basic points. One concerns the

1 anomalies concerning this film in private hands, which
2 I had much experience of in the 1960s and '70s. And
3 secondly, a question that was just asked, what is the
4 central, enormous research importance of this film. I
5 could and will give you some reasons for the centrality
6 of the film.

7 Friday afternoon, November 22nd, and Forrest
8 Sorrels is in Abraham Zapruder's office. Abraham
9 Zapruder gets his camera out of the safe. Had Forrest
10 Sorrels said, "Mr. Zapruder, I am taking that camera
11 and that film as evidence in this homicide," we might
12 still be here today, but we wouldn't be here with this
13 particular problem.

14 Forrest Sorrels did not do that. I think he
15 made a mistake. And because he did not do that, in
16 August of 1966, when I came to this very building and
17 saw the Zapruder film for the first time, what I was
18 permitted to see was a copy of a Secret Service copy.
19 In the summer of 1966, that was the only way any
20 ordinary citizen in this country could see a copy of
21 the Zapruder film, coming to the Archives, registering,

22 and having Marian Johnson screen a copy of a copy. I

1 did that. It was a miserable copy, a miserable copy.

2 I had heard through the grapevine that Life's
3 original, and Life's copies made from that original,
4 4-by-5 transparencies, were remarkably clear. Through
5 brute luck, two months later I ended up being hired to
6 co-direct Life Magazine's assassination investigation
7 and was permitted to see copies made from the original
8 4-by-5 transparencies made from the original.

9 Everything I had been told was correct, they
10 were remarkably clear. One could see the hit on
11 Connally, which was completely unclear on the copy in
12 the Archives. Dallas, November 1966. We have 4-by-5
13 transparencies. The Life team is made up of three or
14 four members. One of those members ends up either
15 stealing or destroying four of those frames, very, very
16 important frames. As a young professor of philosophy,
17 I had not a clue what was going on, but I knew
18 something was going on.

19 So three weeks later, I snuck a camera into
20 the Time-Life building and made a copy of the Zapruder
21 film against specific orders of my employer, Life

Magazine. I did that for two reasons. The film was in

1 private hands and private custody. I figured, I had no
2 idea what was going on at Life Magazine, figured it was
3 a power struggle of some sort and thought for posterity
4 it would be very useful to have a copy outside those
5 private hands.

6 In addition, I wanted to make certain
7 measurements on the film concerning the movement of the
8 President's head, measurements that were finally
9 published in "Six Seconds," which would give some
10 notion as to whether impressed forces on the President
11 at the time of the head shot could be interpreted as
12 either one shot or two shots. I was not permitted to
13 take the film out of the building, hence, to do that I
14 had to make a copy, I had to steal a copy.

15 The following June, we made an offer to Time,
16 Inc., my publisher and I made an offer, which was we
17 would turn over all commercial interests in the book to
18 Time, Inc., in exchange for the right to use selected
19 parts of certain Zapruder frames. We were turned down
20 flat, and on advice of counsel went forward and
21 published artists' renderings. We were sued. I lost

all of the earnings of the book. But we won.

1 Judge Enzer B. Wyatt of the Southern District
2 ruled in a summary judgment that we had used the film
3 as a fair use. That particular judgment mentioned by
4 Jim Lesar was in fact an enormously important expansion
5 of the doctrine of fair use where First Amendment
6 privilege is involved.

7 That is the way things stood. In other
8 words, what I am trying to explain here is that with
9 the film in private hands, all sorts of anomalies
10 occurred. The necessity of me trying to act for the
11 public good to steal a copy of the film, which is a
12 rather extraordinary event.

13 Why is this film important? It is enormously
14 important. If you want to know what happened in Dealey
15 Plaza, this film shows you, as much as any film can.
16 How could it be used by the research community? Well,
17 there have been certain quibbles about the authenticity
18 of this film. I have no doubt that it is authentic,
19 but that can be proven, that can be shown. All queries
20 and challenges to the authenticity, if this film is in
21 government hands, remains in government hands, can be

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satisfactorily overcome. When that is done, this film

1 then becomes a baseline for all additional studies for
2 what happened in Dealey Plaza.

3 For example, the medical evidence. There
4 have been many claims of extra autopsies, faking of
5 autopsy photos, et cetera, et cetera. If the medical
6 evidence does not match what you see on the Zapruder
7 film, then you might have cause to challenge that sort
8 of evidence. Evidence of other films could be compared
9 against this film as a baseline. If they match, fine.
10 If they don't match, you know something is wrong. Much
11 more importantly, of course, is the deduction of
12 trajectories and ultimately, firing points, which can
13 only be done by great precision by using the most
14 resolved copy of the film available.

15 All of that can be done only if this film
16 remains in government hands. In 1964, J. Edgar Hoover
17 said this case would be forever open. In 1977-78, the
18 House committee judged that a conspiracy was involved
19 in the Kennedy assassination, was, in fact, probable.
20 We now know that the case really is still open at this
21 time, and as Jim Lesar pointed out, there may be a

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federal prosecution in the future. For all those

1 reasons, this central evidence in the case should
2 remain in government hands, as it is now, and the legal
3 arguments, I think, that Mr. Lesar and the professor
4 offered should sustain you in your judgment to take the
5 film.

6 JUDGE TUNHEIM: Thank you Mr. Thompson. Are
7 there questions from the board?

8 I have a question for you. In terms of the
9 future needs and uses of this film by researchers, do
10 you think that copies made now, particularly copies
11 that might be -- the complete frame, including the
12 sprocket, copies that are digitalized, do you think
13 that serves the same purpose for the sake of
14 researchers who are examining this film, assuming you
15 that can guarantee that they do come from the original?

16 MR. THOMPSON: Yes, I don't think any
17 researchers should be fiddling around with the
18 original. I think there should be a protocol
19 established as for how a digitized copy is made with
20 the state of the art equipment, state of the art
21 techniques, state of the art algorithms, et cetera.

That digitized copy, which is then fully authenticated,

1 should then be the basis of all research in the future.
2 The original would simply be held as a kind of
3 reference mark that would continually be available to
4 justify the copy as a foundational copy.

5 MR. GRAFF: You seem to water down a little
6 bit in your last statement -- I realize that you don't
7 have a piece of paper in front of you -- the importance
8 of holding on to the original. Suppose you had a team
9 saying this is an accurate, true copy of the original.
10 Why would the possession of the original by the
11 government be essential?

12 MR. THOMPSON: Well, because we don't know
13 whether the techniques that we use tomorrow and the
14 protocols and algorithms we would use tomorrow to make
15 the most highly resolved copy we could make, we don't
16 know that five years from now we can't do better or ten
17 years from now we can't do better.

18 JUDGE TUNHEIM: With respect to the question
19 that Dr. Hall asked Mr. Lesar, is there a ceiling on
20 the amount that the taxpayers should pay for this film,
21 in your view?

MR. THOMPSON: I don't think the taxpayers

1 should pay a penny for this film. I should add that
2 the figure \$150,000 that the Zapruder family received
3 from Life Magazine, I know from working at Life, did
4 not include the licensing rights. Life then sold the
5 Zapruder film to Der Stern, Paris Match, et cetera, et
6 cetera. The Zapruder family also had an interest in
7 those licensing rights. So, I have no idea whether Jim
8 Lesar's estimate as under a million dollars is
9 accurate. In my opinion, it could run as far as 3 to
10 \$5 million at this point.

11 JUDGE TUNHEIM: Thank you very much, Mr.
12 Thompson. We appreciate your joining us today.

13 Next we will hear from Moses Weitzman who is
14 a photographic expert who has worked with the Zapruder
15 film in the past.

16 Good afternoon, Mr. Weitzman.

17 STATEMENT BY MOSES WEITZMAN

18 MR. WEITZMAN: Much of what I was going to
19 say probably has already been voiced by previous
20 witnesses. My understanding of my testimony was to
21 comment on the technical value of keeping the original

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and I believe there are several good reasons for

1 keeping the original in Archive control.

2 As already mentioned, technology is advancing
3 exponentially. In the future we will have better
4 capability of duplicating and analyzing the images both
5 photochemically and digitally. The copies that I made
6 for Time-Life was done 30 years ago. Even today's
7 technology is well ahead. There are better lenses,
8 film, and computerized digital scanning.

9 Because of the last mentioned item, digital
10 scanning, which would enable someone to accurately
11 record but also unfortunately to manipulate the image,
12 it would be important to keep the original as a
13 benchmark of accuracy to guard against irresponsible
14 manipulations of the image.

15 One of the -- I believe Mr. Lesar mentioned
16 something about the information between the sprocket
17 holes. Unfortunately, when I did the work 30 years ago
18 there was no equipment for duplicating 8 millimeter.
19 We jerry-rigged existing hardware and the way I came to
20 be recommended doing it was by the manufacturer of the
21 equipment, Oxbury Corporation. That imagery could very

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well be duplicated by properly manufactured components

1 and if the material were to be retained by the
2 Archives, and I would recommend them doing so, it would
3 be well for them to invest in the hardware, which would
4 be nominal when all things are considered, to properly
5 duplicate this material with today's technology both
6 photochemically and digitally.

7 There are several very fine companies on the
8 west coast making motion pictures which are reaping
9 multimillions which I am sure would leap at the
10 opportunity to assist the committee in doing a better
11 job of this, and I would welcome any questions. I
12 guess that presentation is it.

13 JUDGE TUNHEIM: Go ahead, Henry.

14 MR. GRAFF: Mr. Weitzman, when did you last
15 see the film?

16 MR. WEITZMAN: I think I saw it for a second
17 time when, I believe it was CBS brought it to me for
18 duplicating. I think it was for an anniversary of the
19 assassination, possibly 1975.

20 MR. GRAFF: So you do not yourself know from
21 observation what the condition of the film is today?

MR. WEITZMAN: I was here about six or seven

1 months ago, here in the Archives, I don't remember
2 whether I was shown the film or not, but my
3 recollection was that in '75 it was in less condition
4 than it was when I first saw it. And with all things
5 that are not made of stone, they will deteriorate with
6 time. But preservation of film is a fine art today and
7 Eastman Kodak has put out many, many papers. It has
8 been my personal experience they even reclaimed a piece
9 of footage that the emulsion was peeling away from the
10 substrate. So there is certainly the possibility of
11 maintaining the film. It is approximately 30 some odd
12 years. You can keep films for a 100 years if it is
13 properly maintained.

14 MR. HALL: That was really the heart of my
15 question as well, and that is, is this truly a wasting
16 asset?

17 MR. WEITZMAN: Well, everything sooner or
18 later deteriorates and disappears, but I would think
19 for our practical purposes, I would think that you
20 could maintain this film at least for another 25 to 50
21 years, which would probably serve the purpose well

because by then the technology, which is advancing

1 exponentially, will enable us no doubt to record it
2 with permanent accuracy. That is not available today
3 and my original contention is that it should be kept as
4 a benchmark so that in the near future if someone
5 starts to manipulate the imagem and put things in there
6 that really are not supposed to be there, there will be
7 something that says, "Hey, this is what the original
8 was, there isn't XYZ person out there in the front."

9 MR. HALL: Do you know how many copies there
10 are of the Zapruder film?

11 MR. WEITZMAN: Oh, God. Unfortunately, I
12 probably am the grandfather of many of them. The
13 original copy -- the original copy, the very first copy
14 I made was a 16 millimeter film which I showed to
15 Time-Life. They were very, very excited about that and
16 they commissioned us to make a 35 millimeter copy.
17 Since there did not exist any proper equipment, the
18 first copy I made in 35 millimeter was substandard
19 commercially. It was placed incorrectly via the track
20 area of the film. So it could not be used. That was
21 thrown into a box in my office.

I was general manager and quality control and

1 vice president of a company. I left the company
2 shortly thereafter and was then recalled by the owners
3 of the company, Technical Animations, to sell off the
4 assets, they wanted to close the company down, and lo
5 and behold, in my office there was my box with that
6 piece of film, that technically imperfect copy, and to
7 the best of my knowledge, that copy is what a great
8 many copies have been made from. I kept it as a sample
9 of my expertise, not being into the whole underground
10 culture of the Zapruder --

11 MR. HALL: Part of your portfolio?

12 MR. WEITZMAN: So to speak, yes, what I could
13 do, drawing a perfect circle, so to speak. I would
14 periodically trot it out to show to people. I presume,
15 at some point, because it was not -- I didn't keep it
16 under lock and key, someone made surreptitious copies of
17 it and used it.

18 MR. HALL: It seems to me if you are
19 concerned about baseline issues, that having some sense
20 of the spread, breadth of copies that are out there, it
21 becomes very, very important.

Thank you.

1 MR. JOYCE: Mr. Weitzman, to return to your
2 comment about the importance of preserving the film as
3 a baseline, I am wondering, are you absolutely
4 confident that you, on the basis of the knowledge you
5 have both of the original film and technology in film
6 making and film reproduction today, that you could
7 authenticate the original film in the camera as the
8 original film?

9 MR. WEITZMAN: Let me understand the
10 question. Are you asking me whether at the time I did
11 it initially did I knew it was the original film?

12 MR. JOYCE: No. I am asking you if we were
13 to take -- if the film were to be taken today, and one
14 of the important considerations does seem to me to be
15 -- or thought about -- the baseline, which other people
16 -- I think Jim Lesar mentioned that as well, are you
17 confident that the film can be authenticated as the
18 original camera copy of the film?

19 MR. WEITZMAN: Certainly Eastman Kodak could.
20 It was Kodachrome and there might be, I don't remember
21 precisely, but I believe there were edge markings on

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the film as to when it was manufactured and they

1 certainly could make forensic examination of it when
2 the material was laid down. As to whether it is a
3 piece that was photographed originally, yes, you would
4 look at and if the image reads through the base, we
5 know it came from an original-camera.

6 As to whether it -- it would be impossible to
7 make a duplicate contact copy reading through the base.
8 Today, someone might have hardware to make an image
9 reading through the base optically, that is to say,
10 through a lens. But if one were to make a contact
11 copy, immediately you would see the difference. It
12 would not be proper to also read the wrong way. So
13 there are a lot of ground rules that one could
14 determine A) it is an original that was photographed in
15 a camera, and B) it wasn't made by a contact copy, and
16 the manufacturer could give you a good indication of
17 when this particular piece of film was manufactured.

18 MS. NELSON: I have been interested in what
19 you were telling us because we have heard that the film
20 was really no longer viewable, that it had
21 disintegrated, and I think part of the problem was that

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in the earliest period when Time-Life had it, probably

1 didn't have quite the same facilities that the National
2 Archives has. Just to make sure I understand, what you
3 are saying is that really doesn't matter any more, no
4 matter how bad off the film is, something can be done
5 with it, and can revive it, restored it.

6 MR. WEITZMAN: Unless the image is totally
7 destroyed, and I don't know that answer, the process of
8 duplicating it is on a frame-by-frame basis, on
9 equipment -- at least the equipment that I had used, an
10 optical printing machine, which looks like a motion
11 picture projector sitting on a lathe bed facing a very
12 precise camera focusing on the image and photographing
13 it, is advanced frame at a time. Also, one would use a
14 full-immersion gate that is kind of an aquarium that
15 each individual frame is surrounded by a liquid that
16 has the same refractive index as the emulsion. That
17 would remove a good deal of the damage. If it were
18 being scanned rather than being put onto film, but
19 scanned digitally, then that image could be enhanced
20 and repaired, so to speak, as many modern motion
21 pictures are being done for commercial re-release. So

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unless the material is really, really destroyed, it can

1 be brought to near pristine condition.

2 MS. NELSON: That is an important
3 consideration for us.

4 JUDGE TUNHEIM: There is, however, Mr.
5 Weitzman, from the evidence -- that some of the frames
6 from the original are missing, through handling at some
7 point in time in its past. That, together with the
8 somewhat deteriorated condition that the film is in, is
9 there any argument that first-generation copies made
10 today be better evidence of the original than the
11 original itself?

12 MR. WEITZMAN: Certainly a copy should be
13 undertaken now with today's technology. It is better
14 than what I had 30 years ago. No question about it.
15 And I think if that were to be done, someone should
16 invest 10 or 15 or \$20,000 that is necessary for the
17 hardware to duplicate regular 8 millimeter with full
18 immersion gate. The missing frames were missing when I
19 got the material because that was part of what it is.
20 However, if there exists those frames elsewhere, even
21 if they aren't very good, they could be reinserted and

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enhanced. So you could reconstruct the digital copy

1 that in some ways might be better than the original.
2 But nevertheless, the original would still be the
3 benchmark because one would assume this is being done
4 by responsible people and being held under responsible
5 circumstances.

6 MR. HALL: Help me a little bit here. There
7 are, in fact, copies of the Zapruder film that predate
8 the taking of those frames -- so there is in fact a
9 copy that contains those now-missing frames in the
10 original, right?

11 MR. WEITZMAN: Yes.

12 MR. HALL: The question that I would pose
13 then, and this is in the area of speculation, would it
14 not be the case that that copy would have, for
15 evidentiary purposes, because it is pristine in the
16 sense that it has not been chopped up, greater value?

17 MR. WEITZMAN: No, sir. Because of the
18 contact copy, in my understanding, that is to say, it
19 is an 8 millimeter that was made not optically with a
20 lens but by contact, a sandwich, and as a result of
21 that, fine detail was lost.

MR. HALL: So the argument then would be that

1 previous copy, the full copy that was with the frames
2 in it is of value but it doesn't in your judgment
3 transcend the necessity of having the original as the
4 baseline?

5 MR. WEITZMAN: That is correct.

6 JUDGE TUNHEIM: We have heard arguments that
7 there is the ability to enhance the original, to make
8 it into a sharper image, make a better film out of it.
9 Is that true, can you take the film today and enhance
10 it or are we simply creating new issues where there
11 weren't issues before?

12 MR. WEITZMAN: Yes, there is that capability.
13 I am not an expert in computer technology. I have a
14 passing understanding of it because it is now a
15 technology that is coming to fruition after I retired.
16 However, from the literature I have read the answer is,
17 yes, you can take an unsharp image and sharpen it.
18 There are algorithms that will determine where the
19 edges meet, so to speak, of a light and a dark area and
20 create a new image. You can even -- well, you have
21 seen it in motion pictures, Jurassic Park and any

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number of them, where they create and paint full

1 images. But unfortunately that very capability would
2 enable someone who is irresponsible to paint in
3 something that doesn't exist. So the necessity of
4 keeping that meter block in archive is very, very
5 important.

6 MR. HALL: So the baseline argument really
7 turns out to be important not just in terms of gauging
8 other copies but taking into account with what might be
9 done with the original if it were in private hands, to
10 some way distort --

11 MR. WEITZMAN: Sensational exploitation.
12 Needless to say, everyone has been exposed to that sort
13 of thing.

14 JUDGE TUNHEIM: Next we will hear from
15 Richard Trask who is a photographic expert on the
16 photography of the assassination and has written a book
17 entitled "Pictures of the pain. And we welcome your
18 presence here today, Mr. Trask. Good to see you again.

19 MR. TRASK: I have some prepared remarks
20 which I am going to cut down a bit for the sake of
21 time.

It is both a pleasure and an honor to be

1 before the board again. After I spoke with you in
2 March 1995 during your hearings to obtain public input
3 on the scope of your work, I was most pleased that you
4 actively included photographic records within your
5 purview. I believe the diverse assassination research
6 community and the broader community of American
7 historians universally applaud your efforts and
8 tenacity to locate and make available any and all
9 records relating directly and indirectly to the
10 assassination President Kennedy. I also want to tell
11 you how impressed I have been by the professionalism,
12 objectiveness and commitment of David Marwell, and the
13 staff with whom I have come into contact, particularly
14 Tom Semelak with whom I have spoken and worked with on
15 a number of questions.

16 I have been asked to comment today on the
17 significance of the Zapruder film of the President
18 Kennedy assassination, particularly with regards to how
19 the film fits into the historical record of the event.
20 Though I am not a specialist on photographic
21 technology, I spent over ten years researching the

photographic history of the assassination as to the

1 story of the photographers and their experiences, the
2 visual images they created and how these images have
3 been used and abused by the government, media and
4 critic. My wife and I self-published a book in 1994
5 titled "Pictures of the Pain: Photography and the
6 Assassination of President Kennedy."

7 Historical photography is typically defined
8 as the use of photographic images to facilitate the
9 study and interpretation of history. Photography has
10 limitations for use as historical evidence, however,
11 and may exhibit only partial truths, biases and
12 distortions of reality. It can never tell the whole
13 story of an event, and one must cautiously realize its
14 limits. Yet for all the potential shortcomings,
15 photography comes closer than any other record to being
16 a true trace of of reality.

17 While eyewitnesses' accounts of events can be
18 accurate, their accuracy is skewed by the emotional
19 impact of the event upon the witness, the location of
20 the witness to the event, personal bias, the later
21 opinions of others and recollections over time. Though

the medium of -- through the medium of photography,

1 however, a photographer captures on film in a form
2 truly better than any person's eye or memory brief,
3 relevant and dramatic slices of the reality of the
4 scene, and these created images are able to be examined
5 and interpreted as true historical artifacts of the
6 incident itself.

7 At Dealey Plaza on November 22nd, 1963, about
8 three dozen people had cameras. These incidental
9 observers of history recorded in a variety of
10 photographic formats and with differing equipment and
11 skills, the last moments in the life of a President of
12 the United States. One of the most famous
13 photographers there was Abraham Zapruder.

14 Around noontime Zapruder walked a short
15 distance to the Dealey Plaza park area. He noticed the
16 rectangular block some four feet high at the west end
17 of the decorative concrete pergola area. This location
18 would afford him an elevated perch, giving him a good
19 sweeping view of Elm Street. The complete Elm Street
20 motorcade sequence which Zapruder filmed runs about 26
21 seconds.

The 486 frames, all later subsequently

1 assigned individual numbers for investigative
2 references, had been exposed through Zapruder's
3 telephoto camera lens at 18.3 frames per second. The
4 first 132 frames were shot of the lead motorcycle
5 escort and when Zapruder started his camera again for
6 an approximately 19-second uninterrupted run, his first
7 frame showed the presidential Lincoln already on Elm
8 Street.

9 To call Zapruder's film remarkable is an
10 exaggerated understatement. It is, due to the subject
11 matter and clear angle of view undoubtedly one of the
12 most important if not the most historically important
13 movie film ever made. Noted researcher Josiah Thompson
14 correctly described the Zapruder film to you today and
15 in his 1967 book as "the nearest thing to absolute
16 truth about the sequence of the events in Dealey
17 Plaza."

18 We watch as the President and Governor react
19 to shots being made through their bodies followed by a
20 short sequence in which Mrs. Kennedy leans forward and
21 holds the arm of the President. The next is a terrible

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scene as the President's head explodes. Like a rag

1 doll, he crumbles into his seat while his wife scurries
2 out towards the car trunk.

3 This amateur home movie, almost not made in
4 the first place, soon became one of the most well known
5 artifacts of the 20th century. Though this strip of
6 film shows us in excruciating detail the fact that a
7 president died, it also opened to immense speculation
8 the interpretation of the exact means of his death.
9 Had the Zapruder film never been taken, much of the
10 later debate over the actual sequence of shots, the
11 timing of the shots and the victims' reactions to the
12 shots would not have taken place.

13 It is a dichotomy that much of these later
14 controversies surrounding the facts of the
15 assassination found birth in this, the very piece of
16 evidence that brought us the most truthful visual
17 record of the assassination itself. As a result of the
18 film's existence, various government agencies and a
19 subculture of investigators have delved into science,
20 pseudo science, studying physics, ballistics, medicine,
21 pathology, human reaction to stimuli and photo

22 interpretation, all to find the truth of the reality.

1 During the afternoon of November 22nd,
2 Zapruder had his film developed and then had three
3 first-generation copies made. Later that day the
4 Dallas Secret Service was given custody of two of the
5 copies of the film. These prints were subsequently
6 used by the FBI and Secret Service in the government's
7 investigation. The existence and potential
8 newsworthiness of this film soon became known to the
9 media.

10 Life Magazine editor Richard Stoley arrived
11 in Dallas by the end of the day. Live had the
12 reputation of being the premier weekly illustrated
13 magazine, which prided itself in its ability to snag
14 and illustrate important stories. Stoley contacted
15 Zapruder and was able through good timing, Life's deep
16 money pockets and the magazine's fine reputation as
17 perceived by Zapruder to require all reproduction
18 rights and the original film.

19 Life published a selection of the film frames
20 in its November 29, 1963 issue. Its emotional impact
21 on the American public was immense. Though additional

frames were reproduced in subsequent issues of Life

1 over the next few years, Time-Life's dogged refusal to
2 allow this key historical film to be viewed by the
3 public in any form save by what Life believed to be
4 appropriate was the cause for many legitimate observers
5 to condemn their policy. This possessive and secretive
6 attitude would help foster the belief among many
7 believers that Life was responsible for preventing
8 serious nongovernmental investigation from learning the
9 entire truth about the assassination.

10 The Warren Commission relied heavily on
11 in-house studies of what the Zapruder film revealed.
12 The hearings volume made available in November 1964
13 included reproductions of over 160 frames from the
14 film. As a result, for the first time interested
15 researchers had a chance to examine much of the film
16 for themselves. This was followed in 1969 by bootleg
17 copies of the movie which came into general circulation
18 as the result of the Garrison investigation, and the
19 first television broadcast of the film in March 1975.

20 The film became more and more available and
21 criticism of Time-Life's repressive policy made the

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company so uncomfortable that in April 1975 the films

1 ownership was transferred back to the family for \$1.
2 Numerous theories and books have been produced as a
3 result of the study of the Zapruder film. Various
4 government agencies, major corporations and
5 institutions of higher learning have been caught up in
6 the interpretation of this film's meaning while scores
7 of objective and subjective amateur sleuths have
8 attempted to exact from it elusive truths.

9 And what is the actual significance of this
10 film to the understanding of the events of the
11 assassination? How does it compare with other
12 surviving documentary materials? Comparing it to the
13 14 other known amateur and professional 8 and 16
14 millimeter films made in Dealey Plaza during the
15 assassination and the immediate aftermath, it is my
16 considered opinion that the Zapruder camera optics, the
17 film stock used, the film technique of the operator,
18 and clarity of the subject make it far superior to any
19 other films made. It is also the only film to show the
20 assassination in its entirety and from a location which
21 graphically displays the horror of the event and full

movements of the victims and others in the presidential

1 limousine.

2 Thus, this is the most important artifact
3 existing which actually displays in visual record the
4 entire assassination and one of the best, if not the
5 best in terms of clarity. So too, I would venture to
6 say that given the drama and content of the film, this
7 is undoubtedly the most important film ever made of an
8 historic event. There are certainly other dramatic
9 films which have been made but none compared to the
10 historic nature of this event. I have been unable to
11 think of another comparable example of such a
12 monumental historic event captured on film so
13 completely.

14 Given the importance of the film when
15 compared to other photos and films made that day, how
16 then does this document compare with other singular
17 documentary materials relating to the assassination?
18 As explained earlier, this record is indeed unique and
19 a cornerstone to any examination and investigation into
20 the incident. A simple examination of how this film
21 has been so heavily used in the government

investigation and that of so many other investigators

1 easily bears this out. Put simply, this film is in my
2 opinion the most important surviving document of the
3 President Kennedy assassination.

4 And what of the significance of the original
5 film versus a good first-generation copy of it? The
6 original Zapruder film is a true artifact in that it
7 was the actual record made during the assassination.
8 The one and the same film exposed at the time of the
9 shooting. A physical examination of it without the
10 necessity of electronics or other interpretive devices
11 save light and enlargement, takes us to the time of the
12 event itself, and is clearer than any multi-generation
13 copy can be.

14 Though not a technician, I can tell you that
15 an examination of both the original and any copy made
16 from the original, barring any external manipulation,
17 will clearly show the original superior in clarity to
18 any copy.

19 Should the original be within the collection
20 of the National Archives as the representative
21 historical repository of the nation? I believe beyond

a doubt that it belongs within the collection owned by

1 the United States. It is my opinion that given the
2 importance of this artifact, both in its historical and
3 potential evidentiary nature, such an artifact should
4 not remain in private or corporate hands and should be
5 in the representative hands of the American people.

6 I am, however, somewhat uncomfortable with
7 the idea of direct taking of private property by the
8 government, even when compensated value given. Perhaps
9 I am too much of an optimist, but I would hope that
10 such an artifact as this which has generated quite a
11 bit of revenue over the years might be considered by
12 its current owners to be at a point in its history to
13 be appropriately given over to the American people. It
14 would be preserved and should be available under
15 correct conservation standards for appropriate
16 potential future study.

17 Technologies will undoubtedly continue to
18 evolve allowing for potentially new study of the far
19 superior original film. Availability of the original
20 film may also lay to rest the present opinion of some
21 buffs that the film was manipulated to get rid of

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proofs of conspiracy. Possible commercial licensing of

1 the images might possibly be kept by the owners, but
2 the original film artifact itself is too important to
3 be eventually made into a trophy by others for private
4 or personal gain or notoriety.

5 This film was created by a combination of
6 amateur talent and surendipity. Its place in American
7 history is well established and hopefully the present
8 owners will acknowledge the importance of this film to
9 the American people as a whole by appropriate and
10 generous action.

11 JUDGE TUNHEIM: Thank you, Mr. Trask.

12 Questions?

13 MR. HALL: I defer to my colleague.

14 MR. GRAFF: I regret I do not know your book.
15 Have you personally examined the original?

16 MR. TRASK: I have never seen the original.
17 I have seen the Archive copies and a number of other
18 copies.

19 MR. GRAFF: How then do you know there is
20 greater clarity there?

21 MR. TRASK: Only because that is a fact of

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nature, when you are talking about an original

1 photograph, as originally taken, and compare it with
2 any copy, superiorly made as possible, the copy always,
3 through photographic artifact, through other
4 manipulations, just is not as crisp and clear as an
5 original.

6 MR. HALL: Let me, if I may, just raise a
7 couple of questions. You used some powerful words in
8 your presentation, "truth," "reality," and I raise this
9 because I want to put this proposition before you, that
10 the Zapruder film does not show the assassination of
11 the President. The Zapruder film shows the president
12 being shot. It does not demonstrate who shot the
13 President, and indeed, if you compared the Zapruder
14 film with the video that we have of Jack Ruby shooting
15 Lee Oswald, on an evidentiary basis that's a far more
16 powerful piece of film, if you will, than is the
17 Zapruder film.

18 Now, again, I am playing a little bit of the
19 role of the devil's advocate here so you'll have to
20 excuse me, but doesn't that in essence really mean that
21 other than the great and tragic circumstance of the

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President being murdered in the presence of his wife,

1 doesn't that really mean that the Zapruder film on
2 balance puts more ambiguity into our understanding of
3 the assassination than it brings clarity?

4 MR. TRASK: Simple answer to that is yes. I
5 was trying to point out the dichotomy of the Zapruder
6 film is the fact that if the Warren Commission did not
7 have the Zapruder, film much of the controversy that
8 arose as to number of shots, timing and so forth, just
9 wouldn't have been there because the other films don't
10 show in the clarity that the Zapruder film does this
11 kind of information.

12 MR. HALL: I think this is an important
13 point, at least it is for Dr. Hall. We would like to
14 operate on the theory that as a piece of evidence, it
15 should be retained because it is conclusory. But I
16 would submit that the value of the Zapruder film lies
17 in its ambiguity. And it the ambiguity and hence the
18 inability to come to closure with some of the central
19 issues related to the assassination, at least given the
20 present technology, that makes it important as a public
21 record.

MR. TRASK: There will always be ambiguity

1 with the Zapruder film. However, in my experience of
2 being interested and reading about the assassination
3 over a 30-year period, it has been amazing how much
4 information has been able to be generated by study of
5 the film. I can't tell in the future what new
6 techniques would be devised which will give us a closer
7 aspect of the truth. But, no, you are not going to
8 find in the Zapruder film a Rosetta stone of who did
9 it.

10 MR. HALL: Therefore, how much is it worth to
11 the American public?

12 MR. TRASK: Well, if it were on the open
13 market, I believe that it would be probably --

14 MR. HALL: It is now a trophy, it is not a
15 piece of evidence.

16 MR. TRASK: Yes and no. It is evidence, you
17 certainly can find information about it. It is also a
18 matter of the historic record. It is as important to
19 keep something like this as it is anything else in
20 history. It is, I believe, the most dramatic film that
21 was ever photographed showing a presidential

assassination.

1 MR. HALL: Thank you.

2 MS. NELSON: But to continue that a little
3 bit, LMH clearly has not yet decided -- and they have
4 had it a long time -- to give it to the American
5 people. So if you were weighing the value, should we
6 weigh the value in a way that would cost what, what is
7 the top?

8 MR. TRASK: I believe on the open market
9 something like that would be in the tens of millions of
10 dollars. I do not believe the United States Government
11 should pay that kind of money for that type of film.
12 And I am hoping -- you know, I am just a little old
13 archivist from a small town in Massachusetts, but I
14 know that people give --

15 MR. HALL: Is this a Sam Ervin talking --

16 [Laughter.]

17 MR. TRASK: In my experience, several years
18 ago I had a person who made a lot less money than I
19 make who came in with a copy of the Declaration of
20 Independence that was printed in Salem in 1776 and it
21 had on the back of it "To be read before the clergy in

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Danvers" and we had it examined and it was in excess of

1 \$30,000, and this man did not hesitate, and he could
2 have used the money, to give it to our little archives,
3 and I would think that if the Zapruder family,
4 considering the history of this film -- what a
5 marvelous demonstration this would be to donate
6 something like this.

7 MR. HALL: This is America. Why don't they
8 have a right to make something off their good fortune?

9 MR. TRASK: Well, I think they have. I think
10 it is quite evident that money has been made off of it
11 from day one.

12 JUDGE TUNHEIM: Thank you very much, Mr.
13 Trask.

14 And next, our final witness today is Mr. Art
15 Simon. He is an assistant professor in the Department
16 of English at Montclair State University in New Jersey
17 and he is the author of the book, "Dangerous Knowledge:
18 The JFK Assassination in Art and Film," published in
19 1995.

20 Professor Simon?

21 STATEMENT OF ART SIMON

MR. SIMON: Thank you for the opportunity to

1 address the board today.

2 I want to begin by underscoring a theoretical
3 point, one that Mr. Hall has already just discussed,
4 and that is the footage showed by Abraham Zapruder is
5 not a window onto the past. It is not a reproduction.
6 It is a representation. While it is commonplace to say
7 that film offers us a slice of reality, a window on the
8 world, in fact what Zapruder did was produce a
9 perspective, a perspective on the assassination, one
10 that has become the dominant visual point of view of
11 the event.

12 As a product, and not a window, Zapruder's
13 choices and his reactions, his decision to film in
14 color, to stand in a certain position, to use 8
15 millimeter, to move the camera as he did, these give us
16 a mediated form of vision. These do not give us the
17 truth about what took place 33 years ago. I believe
18 there is really limited evidentiary value left in the
19 Zapruder film. Indeed, although I have not looked at
20 the original in its present form, it may be that if
21 first-generation copies exist in good condition, they

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may be more useful to those who wish to continue the

1 investigation, or as Mr. Weitzman has suggested, some
2 kind of combination of the original and first-
3 generation copies.

4 Now I understand that one of the arguments
5 for preserving the original print holds on to the
6 possibility that some future optical technology might
7 be employed that allows the original to yield new
8 information. As much as I would like to believe this,
9 and with all due respect to what Mr. Weitzman said, I
10 think this may well be an enabling fiction, a fantasy,
11 a fantasy that motivates further study and fuels a
12 faith that some day historical ambiguities will
13 ultimately be made clear.

14 The film has become a fetishized object,
15 invested with the potential to cover up our lack of
16 reliable answers to many questions. In fact, this
17 faith in future enhancements of the film has been a
18 recurring trope over the last 30 years. And of course,
19 a variety of such processes have been applied to the
20 film. The Zapruder footage has repeatedly been cast in
21 the role of ultimate witness, and investigators on both

sides of the debate have invested -- have insisted that

1 with the proper scrutiny its images can render a
2 legible view of the event.

3 Now, while three decades of analysis has
4 produced a significant challenge to initial readings of
5 the film offered by both the government and the
6 mainstream press, it has also produced a multiplicity
7 of interpretations, a crisis of knowledge, a serious
8 critique of film's capacity to offer a unified vision
9 and discernible truth. In other words, the application
10 of new technologies has not and probably would not
11 guarantee a unanimity of interpretation.

12 What then is the status of the original film?
13 I would suggest to you that it is a secular relic, a
14 material piece of the past, and for reasons that are
15 either psychological or, for some, perhaps spiritual,
16 individuals and the nation hold on to such relics. I
17 might add parenthetically that we live in a culture
18 which privileges origins, which endows with
19 significance first things, first editions of books,
20 first words spoken by a baby. We have a ceremony for
21 the first pitch of a ball game. We have manufactured

that significance through social convention and ritual.

1 In a sense, the government does much the
2 same. Why does the government preserve the original
3 Constitution. We have plenty of copies. We know the
4 contents of the Constitution. Now, while the
5 Constitution was a public document from the beginning,
6 the Zapruder film was not, but still, the nation
7 expends resources to preserve significant objects from
8 the past which have had private origins. People's
9 homes, perhaps Lindberg's plane, the list is very long.

10 Perhaps these objects are maintained for
11 aesthetic reasons because the textures and faded colors
12 bear traces of time and change. Moreover, perhaps
13 preserving such objects functions symbolically as the
14 government's way of saying historical consciousness is
15 important, and that although the past cannot be
16 preserved, some index of it can be located in tangible
17 artifacts which have been kept or rediscovered.

18 The film, then, is some -- is part of some
19 ongoing and perpetual archeology project. Although on
20 the other hand, we might say that old things are just
21 kind of cool, and we hold on to old things for reasons

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that we really can't explain. I am not sure there is

1 anything wrong with that. And I am not sure there is
2 anything wrong with the government acknowledging that
3 we hold on to objects and artifacts for that reason.

4 I would only add to what has been said
5 already, and that is, if federal funds are going to be
6 spent to keep the original film out of private or
7 corporate hands, as I believe it should, then some
8 mechanism for access needs to be maintained. The
9 criticism that has been directed at the government for
10 the last 30 some years over its handling of the
11 investigation of the assassination must be taken
12 seriously. And so I would just propose that the board
13 consider whether or not the government is the right
14 institution to hold onto the film and consider at least
15 the options of entrusting the film to a museum, a
16 research institution or a university.

17 JUDGE TUNHEIM: Thank you very much,
18 Professor Simon. Are there questions.

19 MS. NELSON: Actually, Mr. Simon, I don't
20 know that -- it belonged to the Zapruder family and so
21 obviously it belongs in the National Archives if it is

sitting in the Archives, rather than a museum or

1 private institution. I don't think we could do that
2 under our statute. But, of course, your point that it
3 should be kept is an interesting one. If I understand
4 what you are saying, it is okay to keep secular relics?

5 MR. SIMON: Yes.

6 MS. NELSON: That it might be useful to keep
7 it for that reason?

8 MR. SIMON: For reasons that we might not
9 explain in the course of law so much as it raises
10 questions about psychology of the nation, if such a
11 thing exists.

12 MS. NELSON: You also in your book talk a
13 good bit about its cultural meaning to the society. Is
14 this also something you are intimating when you say
15 that it should be in the public sector because of the
16 failure to put it there for so many years? Is it
17 culturally important?

18 MR. SIMON: I don't know from the standpoint
19 of culture for artists who want to borrow the images
20 and to recontextualize them, to comment on the event,
21 on the last 33 years. I don't know that it is

necessary for the government to have the original.

1 Artists can use those images, and have used them and
2 exploited them in various ways. So the original film
3 that ran through Zapruder's camera, I don't know that
4 it is necessary for it to have cultural use in the
5 future.

6 MR. JOYCE: You have quite a turn of phrase,
7 "enabling fiction," and "fetishized objects" and
8 "secularized relic" among them, all of which speak to a
9 certain kind of, in my view, marginalization of the
10 film in the sense of the film as a record, and I am
11 wondering, I certainly agree with you that it is
12 important for government to assist us, the population,
13 in terms of our historical consciousness, but I am
14 wondering if you see in addition to that if we don't in
15 fact have a record here, and if you have any comment to
16 make about the film in its recordness.

17 MR. SIMON: My first comment would be I am
18 not sure that fetishes are marginal. But second, there
19 is no question that it is an important record of the
20 event, and I think those issues have already been
21 addressed. I don't mean to claim that the film has no

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evidentiary value. It has tremendous evidentiary

1 value. I am not sure that it has much value left, in
2 the sense that I think the conflict over
3 interpretations will continue.

4 We have learned important things about what
5 took place on that day thanks to Zapruder's film. So I
6 don't mean to marginalize it as a piece of evidence or
7 a historical record of the event at all, but only to
8 suggest that even though we have the film text, that
9 doesn't guarantee in any way that we will all agree
10 about what we see in the text, and so as Mr. Hall
11 mentioned earlier, ambiguities will persist, such as
12 the nature of writing history and dealing with evidence
13 from the past.

14 MR. HALL: I can't help reflecting on that.
15 I think of the Rodney King videotape, and there three
16 different juries were able to reach somewhat competing
17 understandings of what that film actually told them.

18 The question, I guess of, some moment in my
19 mind is the extent to which we have an obligation, that
20 is, this generation, has an obligation to make sure
21 that generations that come are put in at least as good

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a position as we are with regard to coming to terms

1 with whatever evidence is there. And one of the
2 problems I have in this regard is that admitting that
3 there are theories that explain the assassination in
4 terms of the Federal Government as self-participating
5 and, therefore, the last person you would want to give
6 the emulsion fluid to is the wolf. Recognizing that
7 particular line of argument, it does seem to me that
8 the playing field for those who will subsequently come
9 ought to be in such order that those who come to play
10 with this will be in at least as good a position as we
11 are today, which would seem to indicate to me that
12 there ought to be some response that would make sure
13 that as a physical artifact -- and I know you are using
14 the word "relic" in a different way -- but the
15 preservation of that is not just a matter of symbol but
16 also therefore a matter of substance.

17 MR. SIMON: I would agree. I would just
18 reiterate that I am not sure that those future
19 generations will be free of the same kind of
20 interpretive struggle.

21 MR. HALL: If we know anything at all about

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the writing of history it is that it is hard to find a

1 punctuation mark and that what we may in fact owe
2 future generations is their opportunity to interpret
3 what they will out of the material. If they do not
4 have the material it is hard to interpret it.

5 MR. GRAFF: Professor, I assume you think
6 that rituals and the keeping of artifacts, while they
7 may be fetishistic, some are more fetishistic -- all
8 fetishes are equal but some are more equal than others.
9 And I think that is what we are talking about, and I
10 think that seems to be an element in the response you
11 just gave to Dr. Hall.

12 MS. NELSON: You can see we have been reading
13 too many documents.

14 MR. GRAFF: We have been reading you, too.

15 JUDGE TUNHEIM: Any further questions?

16 MR. SIMON: The question you need to decide
17 then is how much the government pays for a fetish and
18 what that might be worth.

19 JUDGE TUNHEIM: Thank you very much,
20 Professor Simon. Let me just, on behalf of the board,
21 thank all of our witnesses here today who provided

testimony and opinion and thoughts and good advice to

1 us.

2 The Review Board will be keeping the public
3 record open on this hearing for several weeks, until
4 April 18, so if anyone wishes to address the subject
5 further we would be very happy to receive public
6 comment. It can be sent to the Reviews Board's office
7 at 600 E Street Northwest, Washington, D.C.. The ZIP
8 is 20530. It is the Assassination Records Review
9 Board. I will also note for the record that the board
10 has received thoughtful comments from David Lifton who
11 is an author who is concerned about this issue as well
12 and we have also received a letter which will be part
13 of the public record from an attorney for the Zapruder
14 family.

15 Let me again thank the witnesses today for
16 their testimony. I thought it was very helpful and
17 useful for the board as it debates and considers what
18 the position of the United States should be relative to
19 the camera-original version of this historic Zapruder
20 film. The board is going to take a ten-minute recess
21 and then return for some brief additional testimony and

a relatively brief public meeting as well.

1 We will be in recess.

2 (3:20 p.m.)

3 (3:35 p.m.)

4 JUDGE TUNHEIM: The board is now going to
5 come back into session. We have an additional witness
6 on the question of the Zapruder camera-original film
7 that we would like to hear from now, Debra Conway. Ms.
8 Conway?

9 MS. CONWAY: For those of you who have not
10 met me, I am Debra Conway. I came all the way from Los
11 Angeles to be with you today. I want to thank all the
12 the board members, David Marwell and all of the
13 distinguished speakers that came before me today.

14 I would like to take this opportunity to
15 speak on behalf of the active JFK assassination
16 research community. I have no personal agenda other
17 than to show support of the board's past efforts and to
18 applaud your decision to address the status of the
19 Zapruder film. However, I would like to bring to your
20 attention additional actions that the board should take
21 related to the matter at hand. And let me explain.

Recently the Zapruder film was the subject of

1 what I would consider a major workshop and symposium at
2 the JFK Lancer Conference held in Dallas in November of
3 '96. Though important new research and questions on
4 the film were presented, we were severely hindered by
5 the lack of access to a verified copy of the original
6 film, studies of the original film, a control film
7 taken with the original camera, the camera itself, and
8 the first section of film not taken at Dealey Plaza.

9 I have with me for the board today copies of
10 that Zapruder film symposium from the conference which
11 will include different information on the different
12 versions of the film.

13 Many photographic materials of evidence in
14 the murder case are kept under less than satisfactory
15 conditions in various locations. Neither the private
16 owners (one who has kept her film in a locked box while
17 supposedly trying to sell it for the last 33 years),
18 not the government (who has always protected -- not
19 always protected the photographs and films from being
20 damaged) and not even the research community, some of
21 whom seem to have problems being collectors -- none

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have been the best of caretakers up to now.

1 Action that I feel the board could take: The
2 decision you make on the Zapruder film's status as it
3 falls under the language and spirit of the JFK Act must
4 also effect other photographs and films of
5 assassination related events. I ask you to be bold and
6 to use the JFK Act to collect and protect the original
7 of these items. Lock boxes and shoe boxes are not
8 acceptable repositories. Saving a piece of film for
9 years until the value raises and lawsuits over who owns
10 what have brought research on the Zapruder film and
11 these other pieces of photography and films to a halt.

12 The value of scholars' and researchers'
13 access to these items must be placed above those of
14 private owners, private collectors or museums. Let the
15 owners continue their collection of fees for use of
16 films or photos and even maintain ownership,
17 copyrights, be compensated. However, you must insist
18 that the originals of these most important films and
19 photographs be properly housed in the government
20 archives and never allowed to be sold. While I am a
21 firm believer in the American free enterprise system

and the rights of property holders, these must be

1 exceptions. The issue of ownership, copyrights and
2 "show me the money," secondary to the need to assign
3 these materials permanent protection as JFK
4 assassination documents.

5 Thank you.

6 JUDGE TUNHEIM: Thank you Ms. Conway. Are
7 there questions, members of the board?

8 MS. NELSON: Assuming we have to pay for it,
9 the film, we being the American taxpayers, I will ask
10 you the question I have asked others: Where do you
11 stop, what is the ceiling? Is it of such value that we
12 don't set a ceiling?

13 MS. CONWAY: That is a question I have asked
14 myself the last few days that I have been here. In
15 fact, I must have rewritten my statement to you four or
16 five times because I thought it is priceless to me as a
17 researcher. However, as a citizen, I don't feel that
18 we should be held ransom by the Zapruder family. And I
19 am afraid -- as soon as you announce price controls,
20 that is what the price goes up to. I can remember the
21 Nixon Presidency very clearly on that matter.

I think that someone here today made a great

1 point in the audience, and that was that after the
2 Jackie Onassis auction we should be very fearful of
3 what a collector would offer the Zapruder family for
4 this film. We should be very fearful of what someone
5 would be willing to pay just for the copyrights. I
6 think it is two separate issues, the ownership and the
7 copyright. I agree with the speakers before me who
8 said the family should donate the film. I think they
9 have made enough money. But I know that is not
10 answering your question. I would advise you to --

11 MS. NELSON: There is no answer --

12 MS. CONWAY: Do research on what they have
13 been paid. Once you make that public, maybe they
14 should be shamed into donating it. Maybe you need to
15 use the President and the public to help you with that.

16 MS. NELSON: It is, of course, their private
17 property, in their view. I was just curious -- I
18 didn't expect a monetary answer because that is an
19 issue that we have to consider as board members, but
20 also as taxpayers, as responsible members to the
21 Congress, especially in this current era, of what our

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decision is.

1 MS. CONWAY: I was aware that compensation
2 was a factor. Looking at the Nixon papers, I was
3 unaware that compensation was a part of that Act. I
4 wish I had known that before. I would continue to look
5 into any other -- the same as you have attorneys doing,
6 any time that compensation became a factor. Again, I
7 would research what the film was worth in the past and
8 get several appraisers to come in and assist you, which
9 I am sure you are going to do. But I don't think the
10 American people or the citizen of the world should be
11 held hostage by this family's right to something that
12 may already belong to us and should belong to us. Be
13 bold.

14 MR. GRAFF: I just would like to say as a
15 fellow researcher, I share your passion about the
16 documents and records and so on. Are you working on a
17 particular aspect of the assassination yourself?

18 MS. CONWAY: I do help the authors and
19 researchers and on the side, my favorite, the spy
20 world, I love to read about Mexico City and what was
21 going on with the CIA. But I see myself more as a

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facilitator to keep the dialogue going. It doesn't

1 bother me that there is debate and disagreement and
2 discussion. I encourage that.

3 MS. NELSON: We have been very bold on Mexico
4 City. You have a lot of new documents.

5 MS. CONWAY: I am very happy.

6 JUDGE TUNHEIM: Thank you. We appreciate you
7 coming all this way.

8 We have one item of housekeeping that we have
9 to take care of at this public meeting. We have
10 minutes from a meeting we held on October 16, 1996,
11 that have been distributed to all board members.

12 MR. JOYCE: Motion.

13 JUDGE TUNHEIM: Second?

14 MS. NELSON: Second.

15 JUDGE TUNHEIM: Moved and seconded that the
16 minutes be approved. All in favor?

17 (Chorus of ayes.)

18 JUDGE TUNHEIM: Opposed?

19 (No response.)

20 JUDGE TUNHEIM: It is carried on a unanimous
21 vote.

MR. MARWELL: One other housekeeping matter,

1 the vote to close portions of the next meeting on April
2 23 and 24 --

3 JUDGE TUNHEIM: For purposes of reviewing
4 classified material?

5 MR. JOYCE: So moved.

6 JUDGE TUNHEIM: Second?

7 MR. HALL: Second.

8 JUDGE TUNHEIM: All those opposed?

9 (No response.)

10 JUDGE TUNHEIM: That motion is carried.

11 Further, we heard from Mr. Gunn earlier that
12 there are aspects of this decision that are before the
13 board relative to the camera-original film that can be
14 debated in public, and aspects of it that cannot. Now
15 is the appropriate time for additional discussion or
16 debate, or course of action that people would like to
17 pursue. Comment?

18 MS. NELSON: I am somewhat mystified by the
19 interpretation of the Nixon Papers Act that compensated
20 him. I was sitting here trying to remember that, but I
21 seem to recall -- in fact, there is Steve Tilley.

22

Maybe he can help us out. I seem to remember there was

1 no compensation, and instead, the seperation of the
2 public and the private papers. Perhaps we can ask
3 Mr.--

4 JUDGE TUNHEIM: Steve, there is a question
5 that has arisen. You may or may not have the answer.

6 MS. NELSON: A law professor from GW raised
7 the issue of compensation -- we were talking about
8 anything comparable to what we are trying to decide now
9 with the Zapruder film and he raised the question of
10 the Nixon Act, that in fact there was -- the part of it
11 that gave compensation to Nixon. I can't remember
12 that. We didn't finally compensate him?

13 MR. TILLEY: Yes, the Court of Appeals ruled
14 that there was compensation required under the PRMPA.
15 Whether the compensation has taken place or not, I
16 don't know.

17 MS. NELSON: I have never seen that, in fact,
18 he was compensated. The big debate has been over the
19 issue of what were his personal papers and what were
20 the public papers and I have never seen --

21 MR. TILLEY: The ultimate decision was that

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for his personal papers, he was to be a compensated.

1 That was a taking of private papers for public use.
2 There was compensation to him and the court found that
3 the Act permitted that compensation.

4 There is another example in this particular
5 area where Congress passed a law in 1965 to provide
6 compensation for certain parts of the assassination
7 evidence that had been collected, to provide
8 compensation to, for example, Marina Oswald for the
9 articles that had been seized by the Congress.
10 Congress has enacted specific laws that would address
11 this. In the Nixon papers, I believe, it was found by
12 the Court that the Act effected the taking of private
13 property for public use.

14 MS. NELSON: Then the decision had to be made
15 as to what is private property, what on the tapes were
16 private, and what was public. So maybe the decision
17 has been deferred.

18 MR. GRAFF: Has the sum of money been decided
19 upon and paid and made public?

20 MR. TILLEY: I don't believe the actual
21 compensation has taken place.

MR. GRAFF: Even though the taking occurred

1 several years ago.

2 MR. TILLEY: The compensation case was one of
3 many lawsuits that have progressed over the years,
4 certainly the Nixon materials, and there was a ruling
5 that said there must be compensation but I don't
6 believe there has been a completion of that suit yet.
7 Our legal counsel would actually be the best people
8 that the board could address that question to.

9 JUDGE TUNHEIM: Further comments? We
10 unfortunately don't have a lot of time this afternoon
11 due to travel schedules to engage in a lengthy debate.
12 Mr. Hall?

13 MR. HALL: I want to compliment David Marwell
14 and Jeremy and in essence the entire staff. I think
15 this has turned out to be one of our most productive
16 and enlightening public hearings. I think the scope of
17 the range and the sophistication that people were
18 willing to bring to the issues that were presented will
19 in fact be quite helpful to us. It certainly
20 reinforces in my mind the importance again of making
21 sure that the historical field of play is in fact one

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that is level and balanced and that all subjects to

1 come will have the same opportunity as those who have
2 come before.

3 I think we as a group ought to be pretty
4 close to being able to reach a decision on this matter
5 and at some point I will hopefully make a motion to my
6 fellow board members, if my fellow board members felt
7 it appropriate to come up with an answer to the
8 question that is before us at our next meeting.

9 JUDGE TUNHEIM: I think we certainly can --
10 we certainly will have the information available to us
11 by then, the information from today's hearing, from the
12 public record being kept open for the next several
13 weeks for additional testimony to come in. So I would
14 think that is an appropriate motion to make.

15 MR. HALL: Let me then make the motion, and
16 the motion would be that the board as a matter of
17 practice on this issue will search -- reach or take a
18 decision at its next meeting with regard to the issue
19 of the Zapruder film as it has been presented to us.

20 MR. JOYCE: Second.

21 JUDGE TUNHEIM: Moved and seconded that the

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motion be -- that the decision be made at the next

1 regularly scheduled meeting of the board. Is there
2 further discussion on that matter?

3 Hearing none, all in favor of the motion say
4 aye.

5 (No response.)

6 JUDGE TUNHEIM: Opposed?

7 (No response.)

8 JUDGE TUNHEIM: It is carried on a unanimous
9 vote. Anything further that we should be reviewing
10 this afternoon, Dr. Marwell?

11 MR. MARWELL: Should I take it from that
12 motion that we should schedule an open meeting at the
13 next --

14 JUDGE TUNHEIM: We should assume there is
15 time before the 23rd or the 24th?

16 MR. HALL: I think today has certainly
17 demonstrated the great value of bringing, as our
18 general counsel has so ably presented to us, the light
19 of public interest to bear on an issue of such
20 significance. And in making that decision, I think we
21 all recognize and understand the importance of

22 publicly stating our positions.

1 MR. MARWELL: Is there anything we can do to
2 help you along the way, additional testimony or
3 evidence from the public?

4 MR. JOYCE: What will be the process with
5 regard to the additional testimony that comes in
6 between now and then?

7 MR. MARWELL: We will collect it and
8 distribute it as it arrives. I think that is the best
9 way, to collect a --

10 JUDGE TUNHEIM: Will the transcript of this
11 hearing be available?

12 MR. MARWELL: Yes. We will distribute that
13 as well.

14 MS. NELSON: I would suggest that we might
15 ask someone in the legal section of the Archives, like
16 Miriam Nisbet, about the Nixon case. I keep raising
17 this because I am not sure it is a very good example
18 for us. I don't know that it is comparable.

19 MR. MARWELL: I think his point is that where
20 the taking power was explicitly stated in the Act.

21 MR. GUNN: We can get the information from

the Archives about that.

1 MR. GRAFF: I suppose that this company knows
2 that C-Span was recording, that this was of particular
3 interest nationally, and one of the important reasons
4 why Judge Tunheim offered the address at the end was
5 that people everywhere in the country will, whatever
6 hour of the day or night, will hear the invitation. I
7 know it will please Ms. Conway too, in light of the
8 intensity with which she spoke.

9 JUDGE TUNHEIM: We didn't give them your
10 e-mail address.

11 MR. GRAFF: Thank you.

12 JUDGE TUNHEIM: Anything further to come
13 before the board today?

14 Mr. Gunn, anything further you have for us?

15 Is there a motion for us to adjourn?

16 MS. NELSON: So moved.

17 JUDGE TUNHEIM: Second?

18 MR. JOYCE: Second.

19 (Whereupon, at 3:55 p.m., the hearing was
20 adjourned.)

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