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Subject: Court of Claims

Body: To: david_marwell @ jfk-arrb.govcc: (bcc: David Marwell/ARRB)From: kermith @ HUMANITIES1.COHUMS.OHIO-STATE.EDU @ INTERNET@WORLDCOM Date: 05/19/97 10:01:16 AMSubject: Court of Claims David, I spent the weekend with Loren Smith, the Chief Judge of the Court of Claims and one of the nation's authorities on takings. I, of course, did not ask him directly about Zapruder but rather tried to gain some understanding of how the court works and how it views takings issues. A few matters did become clear, although they were not informed by our specific case. First, the Court distributes about one-half a billion dollars a year and in some years it has gone over a billion. Second, the takings fund is appropriated by Congress based on what the Court does. So, the Court seldom looks at a case in terms of what it will cost the American public, although Judge Smith did observe that colleagues do start to worry when awards go over the $100 million mark. He noted, as well, that the anything under $10 million was considered small. Third, many agencies engage in takings and do not have an explicit takings provision in their enabling legislation. The court views this is an inherent power and that Congress would indicate if the agency did not have it rather than it did. Fourth, an plaintiff could go to district court to challenge the constitutional status of a taking, but it would not do so through the Court of Claims. Smith is a Reagan appointee and conservative to the bone. You might want to pass this along to our fellow board members, since my e-mail list is down for the entire day with restoration and repair work. Best, Kermit

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