

PRIVILEGED AND CONFIDENTIAL

May 19, 1995

TO: Jack Tunheim, David Marwell, Tom Samoluk, File

FROM: Sheryl Walter

RE: Zapruder -- next steps

I spoke today with Miriam Nisbet from the National Archives and Records Administration about our next steps regarding the Zapruder film. She said that the upshot of their discussions with Justice was that there is no tort claim here but there is a potential takings issue. The procedural steps are:

a. The Review Board sends a letter to NARA stating that because the film falls squarely within the scope of the ARCA as enacted by Congress as a record that should be added to the JFK Assassination Records Collection, NARA is directed to take the steps established in the act for the collection's administration. This would include preparation of a finding aid and entry into the database.

b. The letter should further direct that the film remain in the preservation storage conditions under which it currently resides and that NARA establish guidelines that ensure public access that is consistent with preservation. The letter should be copied to Zapruder and his attorney. NARA as lead agency would also contact them to notify them that this action has been taken.

c. The ball would then be in the Zapruders' court to file in the federal Court of Claims for compensation for this taking.

d. Justice would take over the process at this point and engage in the process of determining valuation, including retention of experts and entering negotiations, if appropriate. NARA and the Review Board would not be active participants in this process.

NARA wanted to know if the Review Board has any position as to whether Congress intended for records such as these that only the film itself be taken into government possession for preservation purposes or if the copyright was intended to be transferred to the government as well. I said I could not definitively speak for the Review Board but that the Review Board has always seen its mandate as collecting all relevant records in one place, reviewing postponement recommendations and putting as much information into the public domain as possible, and preserving them for the historical record. It appears that the copyright expires in 2018 (75 years after the assertion of copyright, which was presumably in 1963).

NARA agrees with the Review Board's position that the triggering event here is Congress's passage of the ARCA, and that any actions either agency took after that were in compliance with and at the direction of that act. Miriam noted that, based on her experience with the Nixon tapes litigation, the valuation discussions will likely be protracted.

Given the potential for significant sums of money to be involved here as well as significant government litigation resources, it would seem wise for the Review Board to soon notify the appropriate oversight committees that this action is going to be taken as required by Congress in the ARCA. The oversight committees should be fully briefed on the issue, the fact that it has arisen through Congress's action, and its potential financial and other ramifications.

The Review Board may also wish to consider the public and media interest in this situation regarding the film. Many people believe that the film already belongs to the government. It may be useful to prepare a set of briefing materials on the history of the film, and include copies of the documents sent to the Review Board for inclusion in the collection by Time Inc. (Time Inc. should, of course, be notified if any press release is done in which its name is mentioned.)

Please let me know if you have any questions or if you would like to talk more about what to do next.