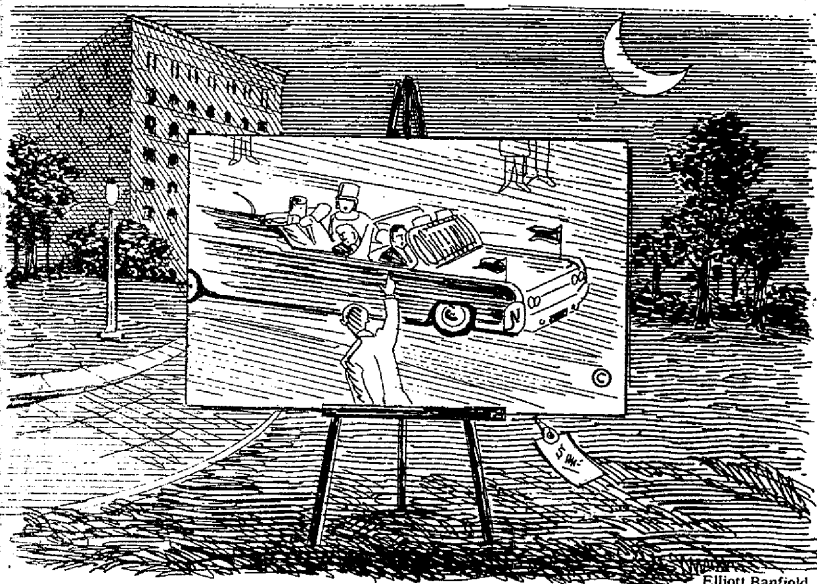


At the Bar | David Margolick

Owning history: Does film of Kennedy assassination belong to all or to one?



Elliott Banfield

Abraham Zapruder, the Dallas dressmaker and coincidental film chronicler of the assassination of President Kennedy, died in 1970. His 486 famous frames of Kodachrome now sit in the United States Archives, alongside Eva Braun's home movies. But the question of who should own the Zapruder film, like the matter of just what it reveals about the killing, is still hotly debated.

Two days after the shooting, Time Inc. bought the film from Mr. Zapruder for \$150,000, then gave it back to his survivors in 1975. Ever since, whenever the film appears, whether in a book, magazine, newspaper or television show, the Zapruders are entitled to a fee. And in the silver anniversary of the shooting, these are banner days. In the last few months news organizations have paid them tens of thousands of dollars to use it.

But should the law allow people to copyright so crucial a piece of Americana? What constitutes "fair use" for which compensation need not be paid? Are some photographs so much a part of history that the First Amendment protects the right to use them? Does a policy of sales only to the highest bidder, which some say is the case with the Zapruder film, skew scholarship toward mainstream views? All these issues were raised in a case filed against the Zapruders last month in Washington.

Abraham Zapruder did not set out for Dealey Plaza on Nov. 22, 1963, with money on his mind. He had left his Bell & Howell camera at home

NEW YORK TIMES THE LAW

FRIDAY, NOVEMBER 25, 1988

and had fetched it only when his secretary urged him to record the President's visit. Mr. Zapruder later told Richard Stolley of Time that the night of the killing he dreamed of hearing a Times Square huckster hawking his film. It was his way of saying he wanted his accidental artifact handled with care, Mr. Stolley recently recalled.

There were other considerations. Fearful that news of a Jewish man's profiting from the assassination could set off a wave of anti-Semitism in Dallas, Mr. Zapruder's lawyer, Sam Passman, suggested his client donate his first \$25,000 payment to Mrs. J. D. Tippet, widow of the policeman killed by Lee Harvey Oswald. Mr. Zapruder readily agreed.

Individual frames of the film — but never the infamous number 313, which shows a bullet shattering Kennedy's head — appeared in Life magazine. But only in 1975, when a bootleg version was broadcast, did the American people see the shocking film in full. The sight reignited debate over the killing, and demand for the film intensified.

Reluctant to police its use, Time sold it back to the Zapruders for a dollar. Henceforth, Henry Zapruder, Abraham's son, who is a tax lawyer with Morgan, Lewis & Bockius in Washington, would decide who could use the film and how much they should pay. Bootleg copies abound, but Mr. Zapruder could sue anyone using one for copyright infringement.

In April 1985 Gerard Selby Jr., a University of Maryland graduate student, sought Mr. Zapruder's permission to use the film in a documentary on the Kennedy killing. He says his letters and phone calls were repeatedly ignored. Eventually, Mr. Zapruder's assistant quoted a price: \$30,000. It was twice what Mr. Selby's film had cost to make and was apparently nonnegotiable. Last month, Mr. Selby took Mr. Zapruder to court. Joining him was Harold Weisberg, who asserted that Mr. Zapruder had reneged on promises to let him see the previously uninspected portion of the film along the sprocket holes.

They noted how, in 1968, a Federal judge ruled that the public's extraordinary interest in the Kennedy killing mandated that "fair use" of the Zapruder film be broadly construed. They also cited Melville Nimmer, the copyright scholar, who once wrote that some photographs are so newsworthy that they should not be copyrightable. He gave two examples: pictures of the My Lai massacre and Abraham Zapruder's home movie. Finally, they argued that by failing to curb unauthorized uses of the film, the Zapruders had in effect abandoned their copyright.

The tension between free speech and copyright has arisen before, most recently in cases over The Nation magazine's publication of former President Gerald R. Ford's memoirs and a biographer's use of J. D. Salinger's letters. It was not resolved then, nor would it be now; Mr. Selby wanted his show to air before Nov. 22. The case was settled: Mr. Selby's documentary, with the Zapruder film, aired last week, Mr. Weisberg will soon see the sprocket areas, and Mr. Zapruder kept his copyright.

Mr. Zapruder said he charged only commercial interests, not scholars, for the use of the film. Mr. Selby and Mr. Weisberg, he said in an interview, just fell between the cracks. Neither he nor his mother, Lillian, will say how much their family has made from the film, except to insist it could have been far more. "I think we've been pretty good about it," Mrs. Zapruder said. "We could have made copies and peddled it on street corners. Someone else would have made millions on it."