

Senator Kennedy's protection racket in the Federal Election Commission

The Federal Election Commission, the "nonpartisan" watchdog over the U.S. electoral process, has given Senator Edward Kennedy (D-Ma.) a 25 to 1 advantage over every other declared presidential candidate in the 1980 race, following release of a recent Advisory Opinion in which the FEC sanctioned the activities of the "Draft Kennedy" committees that are springing up across the nation.

Standing FEC policy is to limit contributions to a declared presidential candidate to \$1,000 per person. But Kennedy, so the commissioners reason, is not a "presidential candidate." Therefore, the FEC has set a \$5,000 ceiling on individual contributions to the "Draft Kennedy" committees. Moreover, the FEC rules allow the same individual to make five different \$5,000 contributions to the Kennedy committees—one to each of the five "independent" committees. The Carter-Mondale committee to Reelect the President has sent up a howl of protest over the decision.

Such untoward bias is not without its explanation. No less than three commissioners are aligned with the Senator from Massachusetts and it is Kennedy's congressional network which watches over what electoral legislation is passed. Consider the following personalities.

Tom Harris is an FEC commissioner who was the personal choice of Kennedy's Common Cause and the Senate Rules Committee to draft the 1971 Federal Elections Campaign Act that formed the FEC. Earlier he served under Paul Porter in the Office of Price Administration. Porter, a founding partner of the law firm of Arnold and Porter, was one of John F. Kennedy's closest friends. Harris, general counsel to the AFL-CIO from 1948 to 1960, was also a personal associate of Newton Minow's dating back to Harris's stint as associate general counsel to the Federal Communications Commission, headed by Minow from 1961 to 1963. Harris and Minow share the view that "equal time" should be eliminated to prevent so-called frivolous candidates and issues from being aired.

Robert O. Tiernan is currently the chairman of the FEC. He was the personal choice for the commission of House Speaker Tip O'Neill, a close Kennedy associate.

Frank Thompson is chairman of the House Administration Committee which is the committee that passes legislation regarding the FEC. Thompson is the principal sponsor of the Common Cause sponsored Obey-Railsbach bill and the Public Financing Act of 1979 and he was chairman of the get-out-the-vote drive for Kennedy in 1960. Common Cause has given him an A rating.

You scratch my back ...

Two prominent Capitol Hill figures recently gave this reporter a glimpse of how the FEC operates as a "protection racket" for the Kennedy machine. Kennedy supporters interested in forming "Draft Kennedy" committees are given free legal advice by FEC staffers who are otherwise reluctant to do the same for supporters of Republican contenders John Connally, Ronald Reagan and others. As one Reagan campaign staffer commented: "Everyone knows its Harris ... He's always on the FEC premises ... never leaves. He's the power there, him and his legal assistant William Oldaker.

Senator Kennedy is not shy about returning the favor either. In his keynote address to the May 1979 national conference of Common Cause, the institutional force behind the FEC's formation, Common Cause member Kennedy singled out founder John Gardner for praise: "We strongly need the kind of leadership provided by Common Cause. I was inspired by John Gardner and the idea of developing a citizens' organization to insist that government institutions be responsive to citizens."

Kennedy's "inspiration" has made him the leading spokesman for Common Cause legislation in the U.S. Senate. Two such bills, the Obey-Railsbach bill and the Public Financing Bill of 1979 would put severe financial limits on the ability of "special interests" and especially

industrial lobbies to make contributions to the candidate of their choice in *congressional*—not just presidential—campaigns.

Who's behind the FEC

The FEC was created by the Federal Election Campaign Act of 1971 as an institution to monitor campaign contributions under the joint and presumably nonpartisan control of Congress and the President. In 1976, it was reorganized by Congress after Edward Kennedy personally intervened so that its members are now appointed by the President alone. In the same year, public financing of presidential campaigns was passed into law as part of this electoral package. Jimmy Carter is the FEC's first finished product.

Since the Carter election, the FEC has increasingly become an agency for harassing electoral campaigns considered "too frivolous" through selective enforcement of a nightmarish web of arbitrary and contradictory regulations surrounding every political act. On behalf of ridding politics of "special interest" pressure, the FEC is functioning to minimize—to zero—the role of the citizen in supporting and voting for the candidate of his choice.

So whose (bad) dream was it?

Two ideas put forward by John Gardner in his book *Common Cause* provide the answer. Gardner advocated financial disclosure as a means of discovering the identity of contributors and vendors, ostensibly to eliminate "special interests" from the American political process and the creation of a federal agency to oversee this; and public financing of presidential and congressional campaigns to ensure that neither Democrats nor Republicans can afford to disassemble this agency.

Gardner began as early as 1968 to lobby for just such a federal agency. Drawing on funds from the Ford Foundation and the Carnegie Corporation, and apparently with advice from John J. McCloy, director emeritus of the New York Council on Foreign Relations, Gardner began to piece together the network that would launch the FEC. Kennedy network involvement has been crucial at several points.

John F. Kennedy was the first President to call for an FEC. In 1961, Kennedy formed the Presidential Commission on Campaign Costs which, after one year's investigation, led to the call from Congress for the first federal election commission "to scrutinize" congressional financing. Leading members of the commission were tied to Gardner and would later, in 1968, work with him in founding Common Cause. Three of the most important commissioners were Paul Porter, mentioned above in connection with FEC Commissioner Harris, Herbert Alexander, and Newton Minow.

Alexander was appointed to the commission by President Kennedy on the basis of recommendations from John Gardner and John J. McCloy. Alexander's specialty was and is computer profiles of political

campaign financing for congressional, mayoral and U.S. presidential candidates. The data he accumulated while serving as director of his Citizens' Research Foundation became the basis for later work by Gardner's Common Cause.

Newton Minow was President Kennedy's hand-picked choice to head the Federal Communications Commission (FCC) from 1961 to 1963 and provided an important interface with the presidential commission. Minow was very influential in shaping the 1960s "Aspen decision" whereby the court allowed the television networks to determine what campaign issues were significant and thereby which candidates would be covered. The Aspen decision, named for the Aspen Institute for Humanistic Studies, provided the opening crack in the equal time regulations of the 1934 Federal Communications Act that guarantees equal time coverage to all candidates and issues.

Now in private practice with the Chicago law firm of Sidley and Austin, Minow is still the major outside consultant to the FEC, the FCC and Common Cause as they prepare a joint campaign to eliminate equal time provisions in presidential campaign debates. (The FEC and the FCC share jurisdictional powers in these televised debates.)

In his book *Equal Time*, Minow proudly describes his close relationship to President Kennedy and the Congress in these electoral law areas: "... I went into the office on easy personal terms with the President himself and many other members of the administration, the Senate and House of Representatives ... this advantage was only accorded to a few other past FCC Commissioners ... including Paul Porter."

In 1972 the Federal Election Campaign Act was passed, based on the work of Kennedy's presidential commission, the 1968 founding of Gardner's Common Cause, and the group's mobilization for reform. With the opening of Congress in 1974, the campaign to give the FEC some clout by instituting public funding of congressional and presidential elections went into high gear.

Common Cause beat the drum against vested interests that were allegedly buying up the Congress. Those opposing a beefed-up FEC, like Rep. Wayne Hays, were removed from office—by scandal if necessary. In the same year, the Supreme Court declared the FEC unconstitutional but then allowed the agency to be reconstituted as an independent executive agency to which Congress could not make appointments. Edward Kennedy introduced the legislation to reconstitute the FEC and those commissioners, including Tom Harris, who had served an initial term already were reappointed by President Ford.

Now today, the FEC is little more than Kennedy's protection racket.

—Karen Manne