



EDWARD M. KENNEDY ORAL HISTORY PROJECT

Interviewer's Briefing Materials **Kenneth Feinberg Interview, 07/08/2008**

Robert A. Martin, Research Director

Miller Center Documents¹

- Ken Feinberg Timeline.
- Ken Feinberg Fact Sheet.
- Key 1970s Judiciary and Senate Office Staffers.

Secondary Source Materials

- Ken Feinberg bio, www.feinberggroup.com.
- Adam Clymer interview with Ken Feinberg, John F. Kennedy Presidential Library, 02/22/1995.
- Adam Clymer interview with Ken Feinberg, John F. Kennedy Presidential Library, 03/13/1995.
- Adam Clymer interview with Ken Feinberg, John F. Kennedy Presidential Library, 09/18/1997.
- Sentencing Reform Act timeline, United States Sentencing Commission, http://www.ussc.gov/15_year/chap1.pdf.
- "Criminal Code Revision, 1978 Legislative Chronology," *CQ Electronic Library*.
- "Kennedy Panel OKs New Death Penalty; Ted Hit," *Chicago Tribune*, 12/05/1979.
- Feinberg, Kenneth R., "Extraterritorial Jurisdiction and the Proposed Federal Criminal Code," *The Journal of Criminal Law and Criminology* 72 (Summer, 1981) pp. 385-399.
- "New Crime Act a Vast Change, Officials Assert," *The New York Times*, 10/15/1984.

Oral History Interviews

- Edward M. Kennedy interview, Kennedy Oral History Project, Miller Center, University of Virginia, 04/03/2007.
- Edward M. Kennedy interview, Kennedy Oral History Project, Miller Center, University of Virginia, 08/07/2007.

¹ These are original documents created by Miller Center researchers for the Edward M. Kennedy Oral History Project. Please acknowledge credit for any use of these materials.

- Patty Saris interview, Kennedy Oral History Project, Miller Center, University of Virginia, 09/25/2007.
- Burt Wides interview, Kennedy Oral History Project, Miller Center, University of Virginia, 02/02/2007.
- Thomas Susman interview, Kennedy Oral History Project, Miller Center, University of Virginia, 05/23/2007.
- David Sutphen interview, Kennedy Oral History Project, Miller Center, University of Virginia, 03/29/2007.
- Thurgood Marshall, Jr. interview, Kennedy Oral History Project, Miller Center, University of Virginia, 07/26/2007.
- Angela Williams interview, Kennedy Oral History Project, Miller Center, University of Virginia, 03/07/2008.

KENNETH R. FEINBERG TIMELINE

Prepared by Margaret Tse and Randi Lewis

Miller Center, University of Virginia, 07/25/2007

1966 In order to create a more consistent, consolidated, and unified criminal code, Congress creates a National Commission on Reform of Federal Criminal Laws, generally known as the Brown Commission, to study the codification of federal criminal laws. ("Criminal Code Revision, 1978 Legislative Chronology," *CQ Electronic Library*)

1973

January On the 4th, consideration of the Brown Commission's report in Congress results in the introduction of Criminal Justice Codification, Revision and Reform Act of 1973, S 1, by the Senate Judiciary Subcommittee on Criminal Laws and Procedures, on which Senator Edward Kennedy (D-MA) serves. ("Senate Judiciary Reports Criminal Code Bill," *CQ Electronic Library*)

1975 David Burke, former Administrative Assistant to EMK, recommends Kenneth Feinberg, an Assistant United States Attorney, as a criminal law specialist for EMK. Feinberg expects that EMK will not be sympathetic to strong law enforcement issues and voices doubts of his compatibility to EMK during his interview. EMK responds that he is not sure what his own views are on criminal justice. EMK hires Feinberg as an advisor. For six months, Feinberg works full-time on S 1. Feinberg also acts as Special Counsel to the Senate Committee on the Judiciary and is one of the principal authors of the proposed Federal Criminal Code. (Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow and Company, Inc., 1999, pp. 240-241; *The Journal of Criminal Law and Criminology*, 1981, p. 385; Adam Clymer interview with Kenneth Feinberg, JFK Presidential Library, 02/22/1995, p. 2; Adam Clymer interview with Kenneth Feinberg, JFK Presidential Library, 09/18/1997, p. 2, 5)

Important issues EMK works on this year include the VRA extension, CAB/airline deregulation, revision of the Senate seniority rule, filibuster reform, Israel trip, Health Security Act S. 3, medical malpractice, defense spending, opposition to Persian Gulf arms sales, oil, criminal code reform, tax shelter reform, aid to Portugal, Age Discrimination Act, Family Planning, Migrant health care, aid to fishing industry, and family, senior and migrant health issues.

Early '75 The Senate Judiciary's Subcommittee on Criminal Laws and Procedures, under the leadership of Chairman John D. McClellan (D-AR) and ranking Republican Roman L. Hruska (R-NE), introduces a revised S 1 bill. New restrictions and penalties for the release of classified information draw strong opposition, especially from press organizations and the American Civil Liberties Union

(ACLU). (*The Washington Post*, 09/29/1975; Kenneth Feinberg interview, 09/18/1997, p.5)

- October* On the 20th, EMK articulates his views on criminal justice. EMK calls for gun control, efforts to relieve burdens on courts, and a minimum two-year imprisonment for violent crimes. Feinberg tells Clymer that he believes EMK's anti-crime attitudes and support for criminal code reform originate from the political influences of his brothers. (Clymer, p. 241; Kenneth Feinberg interview, 02/22/1995, p. 1)
- November* EMK introduces S 2699 to form the United States Commission on Sentencing to issue sentencing guidelines and to reduce numerous statutory maximum sentences. ("Sentencing Reform Act Time Line," http://www.ussc.gov/15_year/chap1.pdf7)
- 1976** Important issues that EMK works on in 1976 include tax reform, election reform, extension of revenue sharing act, 200-mile limit, recombinant DNA, swine flu, regulation of clinical labs and medical devices, Northeast corridor rail improvement, agency budget set-asides for small business R&D, and humanitarian situations in Italy and South Korea, and reelection to the Senate.
- 1977** EMK becomes chairman of the Senate Antitrust Subcommittee; Feinberg serves as EMK's Counsel on the subcommittee.
- Feinberg becomes EMK's Administrative Assistant. (Clymer interview with Kenneth Feinberg, JFK Presidential Library, 03/13/1995, p.2)
- Important issues that EMK works on during this year include criminal law and sentencing reform, lobbying reform, election day voter registration, public participation in agency proceedings, FDA ban on saccharin, sunset on tax spending, lobbying and voter reform, anti-recession jobs program, minimum wage, NSF reauthorization, small business innovation research program, and the situations in Argentina and northern Ireland, including the Four Horsemen.
- May* As Administrative Assistant and chief of staff for EMK, Feinberg works with staff of Senators McClellan, Hruska, Strom Thurmond (R-SC), and Phil Hart (D-MI) on the criminal code after the effort to pass it in 1976 had been abandoned. On the 2nd, EMK and McClellan finally introduce S 1437, a pared down version of the criminal code reform bill S 1. Many of the controversial provisions of S 1, including the official secrets act, are eliminated in S 1437 in hopes to move the bill through Congress more quickly. Among the many changes S 1437 introduces, it establishes fixed prison terms; it establishes a U.S. Sentencing Commission to set guidelines for sentencing by judges; it expands civil rights statutes; and it expands white collar and organized crime penalties. The bill still draws strong opposition from the ACLU, which argues that the bill represses civil liberties. (Clymer, p. 257; "Criminal Code Revision, 1978 Legislative Chronology";

“Senate-Passed Criminal Code Dies in House.” *CQ Electronic Library*; Kenneth Feinberg interview, 09/18/1997, p. 5-6)

November On the 2nd, the Senate Judiciary Committee approves S 1437 by a vote of 14-2. Approval of the bill in committee is largely due to collaboration between EMK and McClellan. (“Criminal Code Revision, 1978 Legislative Chronology”)

On the 15th, the legislation is reported (S Rept 95-605) after three months of markup sessions and one hundred substantive changes in the bill are adopted. (“Criminal Code Revision, 1978 Legislative Chronology”)

On the 28th, McClellan passes away and Thurmond becomes the leading conservative supporter for the bill. (“Criminal Code Revision, 1978 Legislative Chronology”)

1978 Important issues that EMK works on in 1978 include airline deregulation act, Law Enforcement Assistance Administration, labor law reform, extension of ERA ratification deadline, Vietnamese family reunification, China and Soviet trips, hospital cost containment, Nurse Training Act, capital gains tax reform, Community Mental Health Centers, Commission on Biomedical Ethics, D.C. representation in Congress, opposition to military sales to Middle East, opposition to budget cut for the F-18, Soviet emigration, Foreign Intelligence Surveillance Act, the Commission on Immigration and Refugee Policy and extension of the Civil Rights Commission.

January On the 30th, the Senate, with EMK as floor manager, approves S 1437 after eight days of debate. Although the ACLU and the National Committee Against Repressive Legislation (NCARL) continue to criticize the bill, it is approved as substantially the same as that endorsed by the Judiciary Committee. The most vocal opposition comes from conservatives who want tougher criminal laws and an expansion of the death penalty. Thurmond, however, convinces a majority of them to support the bill enabling S 1437’s approval. (“Criminal Code Revision, 1978 Legislative Chronology”)

July The House Judiciary Subcommittee on Criminal Justice approves a bill that almost completely rejects the recommendations of the Senate-passed Criminal Code Reform Act of 1978. S 1437 is not largely supported in the House because of disagreements about how extensive criminal code reform needs to be. Despite EMK’s enlistment of support from Representative Robert Drinan (D-MA), who became Chairman of the Subcommittee in 1979, the measure dies at the end of the 95th Congress. (“Senate-Passed Criminal Code Dies in House”, “Senate Judiciary Reports Criminal Code Bill”; Kenneth Feinberg interview, 09/18/1997, p.8)

1979 EMK becomes chairman of the Senate Judiciary Committee.

Important issues that EMK works on in 1979 include judicial nomination for women and minorities, Illinois Brick Antitrust Reform, conglomerate mergers, oil company mergers and acquisitions, court improvement/reform, capital punishment, opposition to restrictions on Supreme Court jurisdiction, regulatory reform, Higher Education Student Loan Reform, Three Mile Island, FBI charter, women in science, offshore drilling, FDA reform, windfall profit tax, Cambodian refugees, and the Taiwan Security Act.

- January* Feinberg reveals to *The Washington Post* that as the new chairman of the Senate Judiciary Committee, EMK plans to water down his criminal code reform bill by getting rid of parts that would extend criminal prosecution directly to corporate executives if their companies disobey federal laws. The law at the time holds only the corporation and not the executives of the corporation criminally liable. Feinberg is quoted saying, “We are taking into account some of the concerns of the business community and are altering the code to meet those concerns.” (*The Washington Post*, 01/22/1979)
- Mid Year* Feinberg leaves his position as EMK’s Administrative Assistant and becomes Special Counsel to the Judiciary Committee. (*Feinberg Group: Bios; The Washington Post*, 05/06/1979)
- November* EMK appears at Faneuil Hall on the 7th to declare his candidacy for president. Feinberg has doubts about EMK’s electability against a sitting president. He does minimal work for the campaign and focuses mainly on Committee matters. On the campaign trail, EMK faces tough questions about his work on S 1437 and tells Feinberg he wants to stop work on the criminal code effort. (Clymer, pp. 292-294; Kenneth Feinberg interview, 03/13/1995, p. 5, 7; Kenneth Feinberg interview, 09/17/1997, pp. 8-9)
- December* On the 4th, the Senate Judiciary Committee approves another criminal code revision, S 1722, which is primarily written by Senators EMK, Thurmond, and Orrin Hatch (R-UT). The bill contains changes made in order to gain the support of civil liberties groups. It still, however, consists of controversial issues such as bail reform and appellate review of sentences. A key compromise in this bill is a provision banning federal extortion prosecution during a labor dispute unless the coercive conduct was meant to cause death or severe bodily injury. This compromise, which delayed the committee vote for five days, comes only after lengthy negotiations between EMK, Thurmond, and Hatch. (“Senate Judiciary Reports Criminal Code Bill”)
- Immediately after acting on S 1722, the Senate Judiciary Committee approves a new federal death penalty bill, S 114. The law allows the death sentence for first degree murder, treason, espionage, and aircraft hijacking in which human life is taken. EMK votes against the death penalty measure. The ACLU calls it part of a “political deal” by EMK; David Landau, representative of the ACLU argues, “It was just a political deal that was cut by Sen. Kennedy to get the criminal code bill

out of committee.” Feinberg responds by denying there was an agreement to vote on the death penalty in return for approval of the criminal code bill. (*Chicago Tribune*, 12/05/1979; “Senate Judiciary Reports Criminal Code Bill”)

1980

Important issues that EMK works on in 1980 include the Stephen Breyer Circuit Court Nomination, the Protection of Rights of Institutionalized Americans, Fair Housing bill, Mental Health Systems Act and bill of rights, trucking deregulation, Cuban and Haitian refugees, Refugee Act, attorney fees in agency proceedings, Low Income Energy Assistance, Biomedical Research Authorization, and the presidential campaign.

Feinberg and Judiciary staffer Burt Wides decide to float Stephen Breyer, Chief Counsel to the Senate Judiciary Committee, to EMK as a potential nominee to the U.S. Court of Appeals for the First District.

January

On the 17th, criminal code bill S 1722 is reported by the Senate Judiciary Committee, but the bill is never considered by the full Senate. (“Senate Judiciary Reports Criminal Code Bill”; “Senate Judiciary Approves Criminal Code Bill.” *CQ Electronic Library*)

Summer

Feinberg leaves his position as Special Counsel to the Senate Committee on the Judiciary to join the law firm of Kaye, Scholer, Fierman, Hays & Handler. (*The Feinberg Group: Bios*; Kenneth Feinberg interview, 02/22/1995, p. 2; *The Boston Globe*, 08/24/1980)

August

EMK withdraws his bid for the presidency in a powerful speech to the Democratic National Convention. EMK reportedly agrees to support Carter provided that Carter appoints Breyer to a vacant seat on the United States Court of Appeals for the First Circuit. (*The New York Times*, 11/26/1980; Adam Clymer interview with Edward M. Kennedy, 10/31/1997, John F. Kennedy Presidential Library)

November

Reagan wins the 1980 presidential election. The Republicans win control of the Senate and EMK loses chairmanship of the Judiciary Committee.

December

The Senate confirms Breyer’s nomination to the First Circuit Court of Appeals

1981

November

EMK, Thurmond, and Hatch try again to push through a bill to revise and update federal criminal laws. On the 18th, S 1630 is approved by the Senate Judiciary Committee. Like the bills before it, S 1630 is controversial. It receives criticism from various groups including Moral Majority, which believes the bill is too lenient on many crimes, and the ACLU, which argues it threatens civil liberties. (“Criminal Code Revision Dies.” *CQ Electronic Library*)

1982

January On the 25th, S 1630 is formally reported. It is met with numerous amendments by three conservative Republicans; Jesse Helms (R-NC), James McClure (R-ID), and Jeremiah Denton (R-AL). Efforts to reach unanimous agreement on the amendments fail. Thurmond attributes the cloture defeat to the fact that many senators do not want to deal with controversial issues during an election year. (“Criminal Revision Code Dies”)

1983 As editor of a National Policy Exchange manuscript, *Violent Crime in America*, Feinberg writes that in the 1960s and 1970s government “promised more in the way of crime control than it could possibly deliver.” He claims that fear of appearing soft on crime led officials to pursue harsh and mandatory measures that, according to Feinberg, had little effect or had the potential to make crime worse. He writes also of the public policy stalemate and the ideological war of words between the two sides of the political spectrum, particularly apparent during the bipartisan attempt to develop the federal criminal code. (Kenneth Feinberg, ed. *Violent Crime in America*, Washington, D.C.: National Policy Exchange, 1983, pp. ii-iii)

1984 Congress passes and Reagan signs a major crime-control bill to overhaul the nation’s federal bail and sentencing systems. The bill, which is attached to a FY1985 continuing appropriations resolution, contains many criminal code reform provisions that have been pushed by EMK. The law also creates a new seven-member sentencing commission to set a narrow range of sentences judges are to impose for various federal crimes. (*The New York Times*, 10/15/1984)

1985-1989 Stephen Breyer serves as a member of the United States Sentencing Commission, where he plays a key role in reforming federal criminal sentencing procedures. The commission produces the Federal Sentencing Guidelines, which are created to increase uniformity in sentences for criminal cases.

KENNETH R. FEINBERG FACT SHEET

Prepared by Randi Lewis

Miller Center, University of Virginia, 09/28/07

Feinberg's Early Experience

- Clerk to Chief Judge Stanley Fuld, New York State Court of Appeals, 1970-1972
- Assistant United States Attorney, Southern District of New York, 1972-1975

Feinberg's Work with EMK

- Special Counsel, Senate Judiciary Committee, 1975-1980
- EMK Administrative Assistant, 1977-1979
- Counsel, Senate Judiciary Subcommittee on Antitrust and Monopoly, 1977

David Burke recruited Feinberg to come work for EMK on criminal code legislation from the U.S. Attorneys Office in New York. Feinberg was skeptical at first of his compatibility with EMK's position on criminal justice but accepted the job offer after EMK informed Feinberg that he had not yet decided his own views on the criminal code. From 1975 to 1980 Feinberg worked as an advisor to EMK on criminal law, serving as EMK's Administrative Assistant and as Special Counsel to the Senate Committee on the Judiciary. Feinberg was one of the principal authors of the criminal code bills of 1975 and 1977, although Congress failed to pass either bill by the time of Feinberg's departure in 1980. In 2004 Feinberg announced at a JFK Presidential Library Forum that EMK has meant more to him in public life than anyone.

After leaving the Senate, Feinberg wrote on deregulation of the transportation industry, the Comprehensive Crime Control Act of 1984, violent crime in America, and federal sentencing guidelines. In 2001 Feinberg was appointed to serve as the Special Master of the Federal September 11th Victim Compensation Fund. He sits on the Board of Directors for the John F. Kennedy Library Foundation and was one of three arbitrators selected to determine the fair market value of the original Zapruder film of the Kennedy assassination. Feinberg is also a lecturer at the University of Virginia Law School and taught a course here as recently as Spring, 2006.

Important issues that Feinberg worked on with EMK:

- 1975 – criminal code bill
- 1975 – EMK bill to form the United States Commission on Sentencing
- 1977 – criminal code bill
- 1979 – criminal code bill

Other important issues and events that occurred while Feinberg worked with EMK:

- 1977-1979– EMK chairs the Senate Judiciary's Subcommittee on Antitrust and Monopoly
- 1979 – EMK takes chairmanship of Senate Judiciary Committee
- 1979 -1980 – EMK's presidential campaign
- 1980 – Breyer nomination to the U.S. First District Court of Appeals

KEY 1970S JUDICIARY AND EMK SENATE OFFICE STAFFERS

Prepared by Rob Martin

Miller Center, University of Virginia, 06/14/2008

- 1972-1977 Eddie Martin serves as EMK's administrative assistant (a.a.).
- 1969-73 Jim Flug serves as chief counsel on EMK's AdPrac Subcommittee, as well as EMK's Judiciary chief counsel (Flug notes that in those days, with the Democrats in the majority, the chief counsel of EMK's AdPrac subcommittee was his *de facto* Judiciary chief counsel).
- 1973 Tom Susman replaces Flug as chief counsel on EMK's AdPrac subcommittee.
- 1974-75 Stephen Breyer serves as special counsel to EMK on the AdPrac subcommittee.
- 1975 Ken Feinberg is named special counsel to EMK on the Judiciary Committee.
- 1977-79 EMK chairs the Judiciary Subcommittee on Antitrust and Monopoly.
- 1977 Feinberg serves as counsel to the Antitrust subcommittee.
- 1977-79 Feinberg replaces Martin as EMK's a.a.
- 1978 David Boies serves as chief counsel and staff director of Antitrust Subcommittee.
- 1979-1980 Feinberg serves as special counsel to EMK on the Judiciary Committee.
- 1979-81 Richard Burke serves as EMK's a.a.
- 1979 Boies is named as EMK's Judiciary chief counsel and staff director.
- 1979-1980 Breyer replaces Boies as Judiciary chief counsel.
- 1980 Senate confirms Breyer's nomination to First Circuit Court of Appeals. Ron Brown becomes chief minority counsel.
- 1981-86 Horowitz replaces Rick Burke as EMK's chief of staff. Horowitz had previously served as EMK's staff director on the health subcommittee from 1977-81.