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**Sidney Shainwald Public Interest Lecture: THE HONORABLE
EDWARD M. KENNEDY, UNITED STATES SENATOR**

New York Law School

THE 2005
SIDNEY SHAINWALD
PUBLIC INTEREST LECTURE

Wednesday, June 1, 2005

THE HONORABLE
EDWARD M. KENNEDY

UNITED STATES SENATOR

Introduction by
Kenneth R. Feinberg, Esq.

PROGRAM

Dean Richard A. Matasar

WELCOME

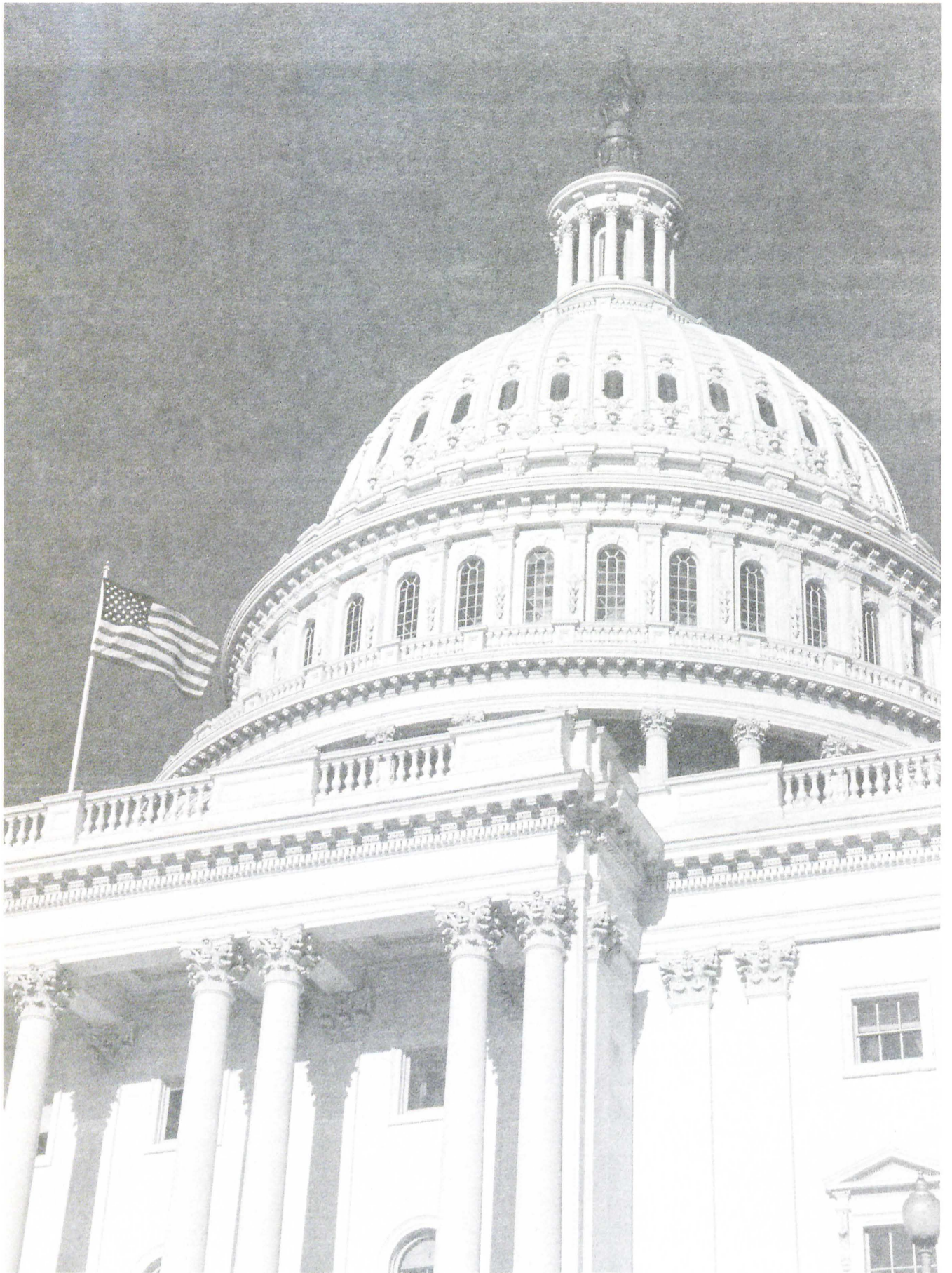
Sybil Shainwald, Esq.

INTRODUCTORY REMARKS

Kenneth R. Feinberg, Esq.

INTRODUCTION

THE HONORABLE
EDWARD M. KENNEDY
UNITED STATES SENATOR





THE HONORABLE EDWARD M. KENNEDY

Senator Edward M. Kennedy has represented Massachusetts in the United States Senate since he was first elected in 1962 to finish the term of his brother, President John F. Kennedy. Since then, he has been reelected seven times, and he is now the second most senior member of the Senate.

Throughout his career, Kennedy has fought for issues that benefit the people of Massachusetts and the nation. The effort to bring quality health care to every American is a battle that Kennedy has been waging ever since he arrived in the Senate. Recent achievements include the Health Insurance Portability and Accountability Act of 1996, which makes it easier for those who change their jobs or lose their jobs to keep their health insurance, and the law that created the Children's Health Insurance Program 1997, which makes health insurance more widely available to children in all 50 states.

In addition, Kennedy is active on a wide range of other issues, including all aspects of homeland security and national defense, restoring economic growth and helping the unemployed, improving elementary and secondary schools and making colleges more affordable, raising the minimum wage, defending the rights of workers and their families, strengthening civil rights laws, protecting a woman's right to choose, assisting individuals with disabilities, improving the fairness of our immigration laws, fighting for cleaner water and cleaner air, protecting and strengthening Social Security, and dealing with judicial nominations.

Kennedy is the senior Democrat on the Health, Education, Labor and Pensions Committee in the Senate. He also serves on the Judiciary Committee, where he is the senior Democrat on the Immigration Subcommittee, and the Armed Services Committee, where he is the senior Democrat on the Seapower Subcommittee. He is also a member of the Congressional Joint Economic Committee, a founder of the Congressional Friends of Ireland, and a trustee of the John F. Kennedy Center for the Performing Arts in Washington, DC.

Kennedy is the youngest of nine children of Joseph P. Kennedy and Rose Fitzgerald Kennedy, and is a graduate of Harvard and the University of Virginia Law School. His home is in Hyannis Port, Massachusetts, where he lives with his wife, Victoria Reggie Kennedy, and children, Curran and Caroline. He also has three grown children, Kara, Edward Jr., and Patrick, and four grandchildren.



Sybil and Sidney Shainwald

REMEMBERING SIDNEY SHAINWALD

When Sidney died in March 2003, Sybil Shainwald, a graduate and Trustee of the Law School, decided to endow the Sidney Shainwald Public Interest Lecture Series. By bringing together public interest and consumer advocates, not only would Sidney's work and beliefs be acknowledged and continued but students would be encouraged to consider public interest law as a viable and exciting career choice. For New York Law School, it is an opportunity to further Sidney's efforts and to honor a man who was invaluable in both his life and his work.

If every man is the architect of his character, then Sidney Shainwald was a master builder—a man of great integrity, humor, intellect, charm, kindness and a man with a life-long commitment to social justice. Sidney was that rare individual—an idealist, conscientious, dedicated, a man of many accomplishments who not only conceived and discussed ideas and ideals but attempted throughout his life to see that those ideals became realities.

Sidney loved his wife, his children and grandchildren, his friends, art, music, travel, a good pun and a perfectly rhymed poem. He was a passionate man driven by his convictions. At once gracious and clever, dignified, principled and loyal, Sidney was a true inspiration to all who knew him.

Sidney had several distinguished and successful careers during his eighty-six years of life. It is not surprising that for fifty of those years he was associated with Consumers Union, which he viewed as a vehicle for social change and economic justice. An impassioned consumer advocate, he worked at Consumers Union starting in 1937, while still a student at City College, until 1982. In the beginning there were 148 subscribers, 10 members of staff whose weekly income totaled \$100 and 350 square feet of office space. The problems were many, the rewards hardly ensured. From its inception, CU's Board and staff were comprised of idealists and iconoclasts, a group of rebels headed by a rebel. This was to be Sidney's life-long commitment. In 1939, he wrote his thesis entitled *Consumer Product Testing Organizations; A Comparative Analysis*. He participated in the first tests which the CU conducted. *Consumers Union Reports*—as it was then known—quickly expanded to 4,000 subscribers by 1939.

After passing his CPA exam and serving in the South Pacific, Sidney became a partner in a public accounting firm, sharing his desk with I.F. Stone in 1941 and always keeping CU as a client. Interested in the arts, he represented some of the greatest artists and entertainers of the 20th century, including Marc Chagall, Jacques Lipschitz, Naum Gabo, George Grosz, Peggy Guggenheim, Mike Todd, Zero Mostel, David Merrick, Albert and Mary Lasker, Dinah Shore, Eddie Albert, London Film Productions, and Magnum Photos. He was also the accountant for and an astute investor in several shows and movies, including *Around the World in Eighty Days*, which paid for his family's house.

Yet Sidney missed the public service orientation of CU and in 1958 when requested to work only for CU, he returned at a substantial cut in pay. He was an ex-officio member of the Board of Directors, CU's liaison with the Consumer Association of Canada, a representative to the Consumer Federation of America and to the International Organization of Consumers Unions. During his tenure, CU established three advocacy offices, became involved in the environmental movement, launched *Penny Power*, a magazine for children and continued to expand its interest and considerable resources on vital economic, social, and health issues.

He said it best: "Consumers Union was never really just a job; it always was and always will be a way of life with me. As far back as my college days, I was interested in Consumers Union not only as an organization for which I worked but as the major dominant force in the consumer movement. I am pleased to have had the opportunity to serve Consumers Union. I would like to think that I have made some contribution to its growth, direction, and policies." Social benefit was the desired result; CU was the mechanism through which to achieve it.

Consumerism has become a household word and Consumers Union, which has been termed a unique social invention, are now inextricably woven into the fabric of society. Some 69 years after its founding, Consumers Union is the only social reform organization born in the Depression to have survived. At the time of Sidney's retirement, the American prototype had been copied in over forty-six countries.

Even after his retirement, Sidney had the consumerist bug, testifying as an expert witness in cases where the Red Cross gave people contaminated blood. His testimony was that the Red Cross had enough money to test the blood. "This is a very rich organization," he wrote in a report commissioned by *Money* magazine. "If it were a public company, I'd love to own stock in it."

In 1981, Sidney paid a tribute to the founding president of CU with whom he worked for more than forty years. He wrote "If *Consumer Reports* were to make a product evaluation of Colston Warne, it might read something like this: 'A unique model, a once-in-a-lifetime production, exceedingly efficient... Definitely top-rated and the best buy ever.'" The same can be said for Sidney Shainwald.

It is a great privilege to have Senator Edward M. Kennedy, the conscience of the United States Senate, as the 2005 Sidney Shainwald Public Interest Lecturer.

INAUGURAL SHAINWALD LECTURER

Kenneth R. Feinberg, Esq.
Special Master, September 11th Victim Compensation Fund
Managing Partner, The Feinberg Group, LLP

Wisdom of Solomon Called for in Administering the 9/11 Fund
April 22, 2004
Inaugural Lecture

INAUGURAL SIDNEY SHAINWALD PUBLIC INTEREST LECTURE

Kenneth R. Feinberg

SPECIAL MASTER, SEPTEMBER 11TH VICTIM COMPENSATION FUND



Photo: PhotoBureau, Inc.

New York Law School Trustee Sybil Shainwald '76, who established and endowed the Sidney Shainwald Public Service Lecture Series, is pictured with Kenneth R. Feinberg, special master of the September 11th Victim Compensation Fund.

On April 22, 2004, Kenneth R. Feinberg, special master of the September 11th Victim Compensation Fund and managing partner of The Feinberg Group, LLP, the foremost law firm in the nation specializing in negotiated resolution of complex legal issues, delivered the inaugural Sidney Shainwald Public Interest Lecture at New York Law School.

Sidney Shainwald, the late husband of New York Law School Trustee Sybil Shainwald '76, was a certified public accountant and an impassioned consumer advocate who worked for Consumers Union from 1937 to 1982, when he retired as associate director. A partner in the public accounting firm of Bernard Reis & Co., he represented some of the greatest artists and entertainers of the time.

When Sidney died in March 2003 at the age of 86, Sybil Shainwald decided to honor her beloved husband's life work by establishing and endowing the Sidney Shainwald Public Interest Lecture Series. By bringing public interest and consumer advocates together at the law school, the annual lecture encourages students to consider public interest work as a viable and exciting career choice.

One of the nation's leading experts in mediation and alternative dispute resolution, Feinberg was named the special master of the September 11th Victim Compensation Fund, appointed by the Attorney General of the United States in November 2001. In this capacity, he developed and promulgated the regulations governing the administration of the fund and administered all aspects of the program, including evaluating applications, determining appropriate compensation, and disseminating awards.

Previously, Feinberg served as court-appointed special settlement master in major litigation involving Westinghouse Electric Corporation, the Agent Orange product liability litigation, the RICO class action concerning the Shoreham nuclear facility, in many asbestos personal injury litigations, and in DES cases, and served as trustee of the Dalkon Shield Claimants' Trust. He has been the mediator and arbitrator in thousands of disputes involving such issues as breach of contract, antitrust and civil RICO violations, civil fraud, product liability, insurance coverage, and various commercial and environmental matters.

Feinberg was also one of the three arbitrators selected to determine the fair market value of the original Zapruder film of the Kennedy assassination and was one of two arbitrators selected to determine the allocation of legal fees in the Holocaust slave labor litigation.

Following is a transcript of Feinberg's April 22 lecture, which he delivered to a packed audience in the law school's Wellington Conference Center.

Wisdom of Solomon Called For in Administering the 9/11 Fund

APRIL 22, 2004

I was asked [to be here] by Sybil Shainwald. I've worked with hundreds of plaintiff lawyers in this country. I know of no plaintiff lawyer who cares more about her clients, is more determined to do justice, and recognizes what it is to be a member of our chosen profession than Sybil Shainwald. You know when you meet with Sybil that every one of her clients is the most important client in the world. And when Sybil asked me not only to give this lecture, but to be the first lecturer, I was honored and I couldn't believe my good fortune.

Most of you know about the 9/11 Fund. Established by Congress within a few weeks after 9/11, it established a separate no-fault, administrative compensation scheme for any victims or victims' families of 9/11 who elect to come into the fund rather than litigate against the airlines, the World Trade Center, the United States, the Port Authority, the security guards, Boeing aircraft, et cetera. No one had to come into the fund. It was purely voluntary.

With six weeks to go—June 15 is the end of the program—98.15 percent of eligible claimants have come into the fund. And with very good reason. The fund is an unprecedented act of generosity and compassion by the American people. The statute creating the fund says the attorney general will appoint one person, and that one person as special master will administer the fund. No appeals. No going to court. If you come into the fund, you must take what is offered. The average award that we have rendered under this fund, tax-free, for a death claim is about \$2 million. The median award, a much more important number—half the people got more, half the people got less—\$1.8 million. The death claims range from a low of \$250,000 to a high of \$7 million. On the injury side, physical injury claims only, the awards range from a low of \$500, a broken finger, to a high of \$7.8 million to a World Trade Center physical injury victim with 85 percent third-degree burns who survived. That's the range of awards.

Now, the statute that creates this program is very simple to read, and hideously complex to administer. Congress said who is eligible for this fund: anybody who lost a loved one on 9/11 because of the terrorist attacks or anybody physically injured on 9/11 in the immediate vicinity of the

terrorist attacks. Believe me, immediate vicinity means different things to different people, including the lady who says she breathed the plume in Jersey City and wants compensation.

The statute lays out in one or two sentences how awards shall be calculated: One, the special master shall calculate the economic loss suffered as a result of the death or injury of the victim. What would the victim have earned over his or her lifetime had they survived? Very provocative (as we'll see in a minute) and very difficult. Juries do this every day. We'll go into a jury room, we'll deliberate what a person who was killed or injured would have earned over a lifetime. [But in this case, we're] asking one person to do it, in the glare of publicity, with a very murky crystal ball.

"Mr. Feinberg, I want millions. My son died in the World Trade Center. He was a first-year associate, but he would have been a partner, and he would have been the senior partner of the firm in eight and a half years."

Mrs. Jones, you don't know, we don't know, it's very speculative.

"I know my son. Don't you dare calculate an award at \$110,000 a year. It's \$900,000 a year because he was going to be a partner. I'm telling you, trust me. I know my son."

That problem of trying to calculate economic loss is very difficult. Then the statute says add to economic loss noneconomic loss. The pain and suffering suffered by the victim, the emotional stress visited on the survivors. Well, I made it very clear at the outset of the program [that] everybody [would] get the same on that: \$250,000 for the death of the victim, \$100,000 for any surviving spouse and dependents. And it's worked very well in minimizing divisiveness among different claimants.

Then the statute says, third, after I add up economic and noneconomic loss, I must deduct collateral sources of income like life insurance. Well, that's the law, but you tell that to families.

"Mr. Feinberg, let me make sure I understand this. I'm entitled to \$3 million, but because I have \$2 million in life insurance, because my husband and I planned for our financial future, you're deducting that and only giving me a million dollars. My

next-door neighbor's entitled to \$3 million. They went to Las Vegas instead of buying life insurance and they're getting \$3 million. I don't get it. That doesn't seem fair."

Then the statute says add to economic loss noneconomic loss. The pain and suffering suffered by the victim, the emotional stress visited on the survivors.

Then you explain "fair." That's what the statute says. I must deduct all collateral sources of income. Fortunately, the statute didn't say that I had to deduct charity: \$2.6 billion in donor private charity in this country [has been] given to 9/11 victims. The foundations—the Red Cross, Twin Towers, Robin Hood—they can't spend the money fast enough. When I went and visited the charities, they all got into a room and said, "What are you going to do about charities?" I said, "Well, what do you think? I suppose I could offset it." "If you offset this," the charities told me, "we're going to hold back all of this money until you cut your checks so you can't subtract an offset." Well, I blinked in two seconds. I'm not going to be responsible for holding back \$2 billion-plus in charity. So we don't offset charity.

The other sources of collateral income we do offset because the statute requires it, but it poses the problems I just mentioned. Finally, the statute says, after you do this, then the special master shall exercise his discretion to see that justice is done. Well, thank you very much. Congress ultimately asks/requires the special master to take care of this.

That's where the discretion comes from. That's why the median award of \$1.8 million is very close to the average, as I try to exercise my discretion to bring down the very high awards, bring up the very low awards to try and have some minor differences between high and low awards. I did not think it's appropriate that 15 percent of the eligible families get 85 percent of the taxpayers' money. So I try as best as I can, consistent with what I think is the statutory framework, to do the right thing.

Now, one of the problems with the program—I mentioned one, calculating economic loss in a very murky world—that's one problem. But there are other problems. Nowhere in the statute is there one line from Congress describing who gets the money and who can file the claim among competing family members. Now, if you think this is easy—

"Mr. Feinberg, make sure my sister doesn't get a dime. My brother hated his sister. Don't you let my sister get a nickel."

"Mr. Feinberg, I'm the biological mother. Do not let the fiancé get any money. They weren't married."

Well, Mrs. Jones, they were going to get married October 11.

"That was never going to happen. It was never going to happen; that wedding was never going to take place."

Wait a minute, the invitations went out, here's where the wedding was going to be, you held a shower.

"It was all over, it wasn't going to happen, that fiancé shouldn't get a nickel."

So, you see, in a way it's put me in an impossible position. I don't know what's going on in a family. I don't have time. I'm under time constraints to get this program done....[There is a] rule that I adopted, rather ingenious, I think, although I think pretty obvious to this crowd.... I look to the state law of the victim's domicile. If the victim had been killed in an automobile accident, there are laws in New York that govern who gets the money. If there's a will, I'll follow the will. But only 25 percent of these people had wills. They were young people, a lot of them, and masters of the universe; they didn't think they needed a will at 31 years of age. So, I basically punt and say I will look to state law. And it's worked very well.... Now, that doesn't help fiancées or same-sex partners, except maybe if you're in Vermont or Massachusetts, but we managed to solve most of those problems by bringing the parties in for mediation.

Then there's the final problem, and the one that really is the most personal. Under the program, I agreed, time permitting, to meet with any family that wanted to meet with me to discuss this program. And I do that. I was late getting here today, much to Sybil's chagrin, because I was meeting with three families this morning, conducting separate hearings. And it's tough. Because the stories you hear in these meetings defy fiction.

"Dear Mr. Feinberg, I lost my son at the Pentagon. He got out of the building. He thought his sister was trapped. So, he went back in to look for her. She had got out a side door. He died."

"Dear Mr. Feinberg, my husband was a fireman. A hero. He went to the World Trade Center, saw 30 people trapped in the mezzanine, and brought them across the street to safety. The captain said to him, 'That's it, stay here.' 'Sorry, captain. There's 10 more trapped in the mezzanine.' He went back toward the World Trade Center. He was killed by somebody who jumped and hit him. If he had taken one step either way..."

The serendipitous nature of this is just frustrating beyond belief.

People ask me all the time, "Is the program a good idea?" I'll

“Now one of the problems with the program—I mentioned one, calculating economic loss in a very murky world—that’s one problem. But there are other problems. Nowhere in the statute is there one line from Congress describing who gets the money and who can file the claim among competing family members. Now, if you think this is easy— . . .”

say, “Only in America.” Only in America would you ever see a program like this. But I do want to mention three final points and then take a few questions.

First, I think the program’s a wonderful and unprecedented act of public generosity. But don’t be too quick to agree with me. I get letters.

“Dear Mr. Feinberg, I lost my daughter in Oklahoma City. Where’s my check? Dear Mr. Feinberg, I lost my son on the U.S.S. Cole, killed by terrorists in Yemen. Where’s my check? Dear Mr. Feinberg, I lost my wife in the African embassy bombings in ’97. Where’s my check? Dear Mr. Feinberg, I lost my wife in the first World Trade Center in ’93, committed by the very same people. How come I’m not eligible for this fund?”

Can we justify a very generous program like this carved out to help, in a free society, only a very small group of people who suffer from life’s misfortunes? That’s question number one.

Question number two—to me, even a tougher question. Even if we think it’s a good idea to have a program like this, should everybody get different amounts of money? Or would we have been much better off giving everybody the same flat payment, whether you’re the banker, the busboy,

the stockbroker, or the policeman? That’s a very tough call. Everybody getting the same amount is not exactly the American way. Social Security is based on what you earn. Juries every day in Judge Freedman’s courtroom take into account whether you’re a banker or a busboy. The idea that everybody would get the same is very problematic. It certainly would make my job easier, not to have to deal with the crystal ball.

Then there’s the final question, certainly on Sybil’s mind. Is this a model or some sort of template to deal with other mass disasters? Should we do something like this for asbestos? Should we do something like this for [future] mass disasters?

Well, I’ve thought about that. I must tell you, I don’t think you can transfer [this program] to other situations.... The public overwhelmingly supported this program. They get a little upset when people yell at me, “Why aren’t I getting \$4 million instead of \$3 million?” The public writes me letters saying, “How dare they?” But that’s grief. I understand that. So I don’t think this program is replicable, insofar as it provides such generosity at the taxpayers’ expense. The idea of having an administrative, no-fault system, we’ve had that product for years. Workers’ comp, black lung program, we’ve had these types of programs for over a century. But this type of generosity under these terms is, I think, rather unique.

So that is sort of my overview. But I just want everybody to know that this program and this effort is what Sybil, I believe, was thinking about when she discussed establishing a public interest program lecture series named after a unique individual like Sidney. And if I have done anything today, I hope that New York Law School and Sybil will agree with jump-starting this program. May it enjoy many more years of success, and for many more years I hope Sybil will do the introductions.

New York Law School

LEARN LAW. TAKE ACTION.

Founded in 1891, now one of the oldest independent law schools in the nation, the New York Law School early on established itself as a place of opportunity, committed to keeping the doors of the legal profession open to a diverse population of students. The evening division, established in 1894, is a cornerstone of that mission, making it possible for a large number of students already in the workforce to pursue a legal education.

Over the decades New York Law School has attracted a faculty renowned for its engagement in public life, and for treating the law as a tool for social action, not just scholarly inquiry. Among them:

Arthur Leonard, an expert on sexual orientation law and gay family law, has chronicled the legal aspects of the lesbian and gay community in scholarly as well as popular publications.

Nadine Strossen, who joined the faculty of New York Law School in 1988, has served as president of the American Civil Liberties Union since 1991 and is regarded as one of the nation's most influential lawyers.

Michael Perlin, an expert on mental health law, has devoted his career to championing legal rights for people with mental disabilities.

Peter Strauss, a pioneer in the field of elder law and author of the most respected textbook in the field, founded the school's Elder Law Clinic.

Seth Harris, a former senior advisor to two U.S. secretaries of labor, trains students and educates the public about the laws and public policies pertaining to the American

workforce, through his Labor & Employment Law Program.

While the faculty are illustrative of New York Law School's commitment to social activism, the school is equally defined by its unique approach to training its students, many of whom go on to be leaders in their fields as well. Outside programming, including externships and clinics, gives students a chance to contribute to the social justice agenda while gaining practical lawyering skills. Five academic centers, including the Justice Action Center (described below), provide a locus of learning where students and faculty can study and work together as colleagues.

The Law School's **Office of Public Interest and Community Service**, created to focus and coordinate the efforts of students, staff, faculty, and alumni for the public good, directs students toward volunteer opportunities with entities such as the Unemployment Action Center, immigration help desks, the Legal Aid Society, and the Domestic Violence Project. Students who complete a requisite number of volunteer work hours earn the Public Service Certificate upon graduation.

These factors, an accomplished faculty of scholars committed to law as a useful tool for social change; a curriculum designed to instill those values in our students and to provide them with opportunities to make their own contributions through public service; and five academic centers engaged in research and activities to further the public good and contribute to the improvement of the legal profession, demonstrate the New York Law School commitment to the advancement of justice.

The Justice Action Center

A CRITICAL INQUIRY INTO PUBLIC INTEREST LAW

The Justice Action Center brings together New York Law School faculty and students in an ongoing critical evaluation of public interest lawyering. Through scholarship and fieldwork, the Center seeks to evaluate the efficacy of law as an agent of change and social betterment. The Center fosters collaborative efforts by faculty and students to engage the specific problems presented in the fields of Anti-Discrimination Law and Economic Justice, Civil Liberties, Criminal Law and Death Penalty, Environmental Law, Family Law, Immigration Law, Labor and Employment Law, and Mental Disability Law. In addition to a focused curriculum, symposia, and research opportunities, students have the opportunity to gain direct

exposure to the field of cause lawyering through externships, clinics, and workshops.

Through these initiatives, the Center seeks to instill in students a deeper intellectual understanding of the law regardless of their final career goals, and to present opportunities to maintain their ties to the social justice community beyond law school. Recognizing that students will pursue varied careers, the Center aims to provide a framework for analyzing the pervasive questions and contradictions relating to social justice in American society, irrespective of the context in which they may arise.

New York Law School

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