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Portraits of Grief: A Focus on Survivors

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PORTRAITS OF GRIEF: A FOCUS ON SURVIVORS

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I want to start with a confession of sorts: I have always read obituaries, those that are paid (the ones typically in small print and usually written by family members) and those that are unpaid, written by newspaper staffers (called obituarists) and often accompanied by a photograph (usually quite dated) of the deceased. When I mention this habit to people, they always ask why I would spend time reading about people I did not know.[2] To avoid the macabre and to add a touch of gallows humor, I usually remark that I read obituaries just to make sure my name isn't there.

Until I began this paper, I had not placed the above-described habit in any broader societal or academic context although I suspected

1. Professor of Law, New York Law School. Smith, B.A. 1974 cum laude, Phi Beta Kappa; Temple, J.D. 1977 cum laude. Involved with financial management education programs for consumer debtors. Has worked with, and currently oversees, a program for individual debtors through New York Legal Aid Society. Testified before National Bankruptcy Review Commission and Congress.

Although scholarly writing is a largely solitary enterprise, many people help an author. I want to thank Adam Levy, NYLS '04, Joseph Molinari, my NYLS library liaison, and Robin Dingle, my NYLS administrative assistant, for their invaluable assistance with this article. Without their help, it would not have been completed.

One more personal note. The panel of which the paper is a part, *Portraits of Grief, Looking at the 9/11 Obituaries Through a Legal Lens*, was inspired by a paper entitled "*The Attack on America; Faces in the Crowd,*" written by my son, Zachary Cooper, for a rhetoric course at Bates College taught by an inspirational professor, Stephanie Kelley-Romano (copy on file with author). In his paper dated October 2001, Zack writes, "[i]n an effort to honor those killed on September 11th, the *New York Times* has been running a page each day at the end of the "*Nation Challenged*" section, giving the obituaries of those who died in the attack. The obituaries are not the standard *New York Times* obituaries. Instead of outlining what the person did in their life, they tell of who the person really was. The *New York Times* is giving a face to the tragedy . . . ." It is out of this observation that several of us on the faculty gave more thought and attention to our already growing perceptions and feelings regarding the *Portraits of Grief*. We also begin to reflect on the *Portraits* through a legal lens. That endeavor led to the aforementioned panel and these articles. I welcomed this opportunity to share a panel with my close colleagues and friends: Lenni Benson, Faith Stevelman Kahn and Carlin Meyer.

2. I also read the *New York Times* wedding announcements. So, one could say that at least I read about both the happy and the sad moments in people's lives. *See* LOIS SMITH BRADY, VOWS: WEDDINGS OF THE NINETIES FROM THE NEW YORK TIMES (William Morrow & Co. 1997) (reporting on weddings in the *New York Times*).

that I was not alone in being fascinated by the world of obituaries. With this paper, I have come to see that there is a rich literature about obituaries and the role they can and do play within societies. There are books just containing obituaries.[3] There are conferences for those who write obituaries (indeed, writing obituaries is a specialization within journalism) where they debate, among other things, what should and should not be contained in obituaries.[4] Writing one's own obituary—without the expectation of imminent death—has been used as a form of therapy for troubled adolescents and as a device by financial literacy teachers to assess future goals.[5] And, there is an academic literature which uses obituaries as a means of studying a wide range of topics: history, culture, gender, race, and aging.[6] A few examples suffice. Bill Bytheway and Julia Johnson have studied how obituaries reflect the course of people's lives. They note, ". . . an obituary threatens to im-

3. MUSHIRA EID, THE WORLD OF OBITUARIES: GENDER ACROSS CULTURES AND OVER TIME (Wayne State University Press 2002); *see also* MARVIN SIEGEL, THE LAST WORD: THE NEW YORK TIMES BOOK OF OBITUARIES AND FAREWELLS (Quill 1999); *see also* HUGH MASSINGBERD, THE DAILY TELEGRAPH SECOND BOOK OF OBITUARIES: HEROES AND ADVENTURERS (MacMillan 1997).

4. The Great Obituary Writers' National Conference is held annually and is hosted by Carolyn Gilbert. A website has been set up, discussing the Conference, as well as hosting a forum for discussion, analysis and research for those who follow "the lure of the obituary." *See* http://www.obitpage.com (last visited Nov. 5, 2002).

5. Isabelle Rubin LaBelle, *Obituaries by Adolescents: A Therapeutic Technique*, SOCIAL WORK, 32(1), 538-539, (1986); Jean Braucher, *Report on a Study of Debtor Education in Bankruptcy*, Oct. 2001, *at* www.abiworld.org/research/braucher.pdf. Participants are asked to write down their aspirations if given a year to live to determine if they are spending their money on things they really cared about. The Coalition for Consumer Bankruptcy Debtor Education, a not-for-profit corporation, dedicated to developing and implementing financial literacy programs for consumer debtors uses a similar strategy. On page 6 of the Financial Management Guide produced by the Coalition, it asks debtors the following question: "If this were the last year of your life, what five things would you do in the coming year?" (copy on file with author).

6. Eid, *supra* note 3; Gary L. Long, *Organization and Identity: Obituaries 1856-1972*, 65(4) SOCIAL FORCES 964-1001 (1987) (noting that a study of obituaries over time in the United States reveal "trends toward impersonal, standardized, categorical and objective portrayals" of deceased's identities which coincide with social structures and arrangements); A. Odasuo Alali & Sophia A. Adjaye, *Personification of Death in Ghanaian Death Notices,* 82(1) PSYCHOLOGICAL REPORTS 223-226 (1998) (stating that Ghanaian death notices reveal "cultural attitudes toward death and how death is managed and feelings about death and dying are expressed."); Allan Marks & Tommy Piggee, *Obituary Analysis and Describing a Life Lived: The Impact of Race, Gender, Age and Economic Status,* 38(1) OMEGA JOURNAL OF DEATH AND DYING (1998-1999) (revealing that socio-economic characteristics of the deceased affect the length and content of obituaries in 1993 in Arkansas).

pose public judgment upon private grief. The life of the deceased becomes public property and readers become instant experts on the strengths and weaknesses, and the successes and failures of the deceased."[7] Professor Mushira Eid has written a fascinating book titled, *The World of Obituaries: Gender across Cultures and over Time,* where she examines obituaries from Egypt, Iran and the United States over five decades ranging from 1938 until 1988.[8]

The *New York Times* "Portraits of Grief," initially contained in the "Nation Challenged" section of that paper, has provided the nation—indeed the world—with an opportunity to read about those who died on September 11th, whether in the Towers, on the ground, in an airplane, or at the Pentagon. These obituaries have been extraordinary in many respects. They have now been aggregated and placed in book form,[9] with the proceeds being donated to the Times 9/11 Neediest Fund and each immediate survivor is to receive a free copy. The *New York Times* even has a website dedicated to the "Portraits," with the ability to search for specific names of the deceased, comment online, and read related stories.[10] Numerous articles have been written about the "Portraits;"[11] articles have even been written about the obituary writers, some of whom have given speeches about the experience.[12] There have been television programs addressing the "Portraits."[13] Some have

7. Bill Bytheway & Julia Johnson, *Valuing Lives? Obituaries and the Life Course,* 1(2) MORTALITY 219-234, 221 (1996).

8. Eid, *supra* note 3, at 14 (notes that "[Obituaries] can be viewed as a genre of sort. They are texts written by individuals with a certain cultural context for a certain purpose. As such, they conform to a certain format and reflect aspects of the social context within which they are written - its values and perhaps its attitudes toward death, its people and perhaps how they view themselves, and by implication, their perception of gender.").

9. HOWELL RAINES & JANNY SCOTT, PORTRAITS 9/11/01: THE COLLECTED PORTRAITS OF GRIEF FROM THE NEW YORK TIMES (Times Books 2002).

10. *Portraits of Grief: Glimpses of Some of the Victims of the September 11th Attacks, at* http://www.nytimes.com/pages/national/portraits (last visited May 19, 2002) (for a further explanation, *see* Editors' comments video link on that website).

11. Louise Branson, *Profiles of Victims Become a Moving Ritual*, STRAITS TIMES (SINGAPORE), Dec. 13, 2001, at 19; Peter Beinart, *Terror Ushers New Age of Reason*, THE AUSTRALIAN, Jan. 3, 2002, at M07; Frances Katz, *Living Online*, THE ATLANTA JOURNAL AND CONSTITUTION, Feb. 1, 2002, at 2E; Marcus Gee, *Remembering September 11: The Portraits of Grief, Legalmedia*, (Nov. 2001), *at* http://www.legalmedia.net/column/2001/01-11/01/0111_gee_marcus_portraitsof-grief.php?sess=10.

12. *See e.g.* Barbara Stewart, Love Stories: Portraits of Grief From the World Trade Center, Address at Knox College (Feb. 4, 2002).

13. *Today*: Wendell Jamieson, editor of the *New York Times'* "Portraits of Grief" page, and writers Lynda Richardson and Anemona Harocollis discuss the vignettes in

started to study the demographics of the deceased, and the "Portraits" will be able to assist in that process.[14]

Without question, the "Portraits" are very different from the "standard" form obituaries most of us read in our daily papers. They are vastly more personal, more human than most obituaries.[15] They tell the story of individuals' lives, not just individuals' accomplishments. They are, as Barbara Stewart, one of the writers, observed, "intimate tales."[16] They speak about the deceased's world—the spouses, children, parents, and friends left behind.[17] They recount little vignettes about the person who died—their habits, their moments of joy, their day-to-day activities.[18] In so doing, these obituaries make the ordinary extraordinary; they turn ordinary people into extraordinary people.[19]

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the paper that honor those who were lost in the World Trade Center on September 11th (NBC News, Transcripts, Oct. 21, 2001); s*ee also Good Morning America* (ABC News, May 15, 2002).

14. *See* Eric Lipton, *The Toll: In Cold Numbers, A Census of the September 11 Victims*, N.Y. TIMES, Apr. 19, 2002, at A14 (providing initial articles on the demographics of those who died); Anthony De Borros, *Most Victims Were Male Professionals; Many Were Parents*, USA TODAY, Sept. 27, 2001, at 2A.

15. Cooper, *supra* note 1.

16. Barbara Stewart, *Voices: Portraits of Grief Amid So Much Death, Celebrations of Life*, COLUMBIA JOURNALISM REVIEW, ¶ 5 (Jan./Feb. 2002), *at* http://www.cjr.org/year/02/1/stewart.asp.

17. *See, e.g.*, *Portraits of Grief: Robert McMahon: Great Do-It-Yourselfer,* May 19, 2002, (describing how McMahon and his wife Julie "bought the house in Queens where he grew up, pulled it apart and created a vastly improved version."), *at* http://www.nytimes.com/2002/05/19/national/portraits/POG-19MCMAHON.html; *see also Portraits of Grief: William Esposito: What Really Mattered,* Dec. 31, 2001, (describing Esposito as going to Florida for Easter and Passover. "It would be just the four of us -no phones, no friends, no nothing- so we'd play cards," his wife said. "And by the end of the vacation, the kids would owe him or he'd owe them like a million dollars. Of course, they never played for real money. As long as we were all together that was really all that mattered."), *at* http://www.nytimes.com/2001/12/31/national/portraits/POG-31ESPOSITO.html.

18. *See, e.g.*, *Portraits of Grief: Donald W. Robertson, Jr.: Ireland in His Sole*, May 20, 2002, ("He was seen in all his pictures with a child climbing on him. The family had to crop him out of a family reunion shot to get a photo without a small arm or leg draped around him."), *at* http://www.nytimes.com/2002/05/19/National/portraits/POG-19ROBERTSON.html; *see also Portraits of Grief: Lorenzo Ramzey: King of Chess, Not Golf*, Nov. 20, 2001, ("[E]very day during his lunch hour, he challenged anyone to play. If no one was willing, that did not stop him. He dragooned an opponent into the game. Could you beat him? Forget it."), *at* http://www.nytimes.com/2001/11/28/national/portraits/POG-28RAMZEY.html.

19. ANNE FIROR SCOTT, MAKING THE INVISIBLE WOMAN VISIBLE (University of Illinois Press 1984); LAURAL THATCHER ULRICH, A MIDWIFE'S TALE: THE LIFE OF MARTHA BALLARD BASED ON HER DIARY 1785-1812 (Vintage Books 1991); Karen Gross, et al.,

In this way, they make heroes of all who died; they all become "famous" in ways that perhaps they might not have been but for September 11th. Or, stated differently, the "Portraits" become a means for recognizing that much of what makes a society function is not recognized or visible. As George Eliot observed, "In acknowledging for a moment the passage of such lives, we remind ourselves that our world is shaped, and colored not only by the actions of great leaders and the interplay of economic forces, but by the countless lesser contributors, be they dancers, airmen, inventors, doctors, entertainers, architects, batsmen, thinkers, villains or mere players with walk-on parts in the scenes of history."[20]

It seems that most people who read obituaries or write about them—including the "Portraits of Grief"—focus on the deceased. That is obviously not the least bit surprising. In my own reading of obituaries—and that extends to the "Portraits"—I, too, clearly read about the person who died.[21] But, in truth, my reading of obituaries has always had an odd focus. In reading obituaries, I do not focus on the deceased. Instead, I focus on the survivors. I am sure there are lots of explanations for this, some vastly too personal to share here. But, there are two reasons I am comfortable disclosing. First, part of the reason for my focus on survivors is that while I think it is terrible to die (except in the rarest of circumstances), it is the burden of dealing with death that falls upon the loved ones. The separation occasioned by death is felt most acutely by the survivors.[22] As a saying just off Manhattan's West Side Highway proclaims, "Most of the victims of 9/11 were not in the vicinity of the Towers." Second, for most of my professional life, I have focused on bankruptcy law. As such, I look at people who and businesses that have failed—losing money and often self-esteem and self-respect. I then pay attention to that aspect of the American legal system—the federal bankruptcy laws—designed (at least in part) both to deal with this failure and to help people and businesses start

Ladies in Red: Learning from America's First Female Bankrupts, 40 AM. J. LEGAL HIST.1 (1996).

20. Eid, *supra* note 3, at 307 (citing George Eliott).

21. *See* Carlin Meyer, *Who Cares: Reflections on Law, Loss and Family Values in the Wake of 9/11*, 46 N.Y.L. SCH. L. REV. 653 (2003).

22. *See e.g.*, ELIZABETH KUBLER-ROSS, ON DEATH AND DYING 51-146 (Simon & Schuster 1997) (1969) (explaining that those who grieve the death of a loved one experience the grief in the following five stages: shock, denial, bargaining, depression and acceptance).

over.[23] Bankruptcy's purpose, at least in the eyes of some, is rehabilitative in nature.[24] Because of my focus on debtors as survivors, the "Portraits" were and remain particularly poignant for me because they speak very directly about the survivors. In representing a fuller version of the deceased's lives, they left a fuller picture of the people they left behind. So, these "Portraits" speak directly to that which has always concerned me: the survivors.

It is because of my focus on survivors that I have given considerable thought to what will happen to them. What will become of them? How will they survive, both short and long term? I am by no means alone in focusing on survivors. Much has been written about the survivors.[25] Many have appeared on television and in other media outlets, letting us into their homes and into their thoughts.[26] Their private grief has, in some sense, become public. The most poignant example of this, for me, is the focus on the children born post-September 11th to women whose husbands died on September 11th. A recent issue of *People* magazine (for which there was also a television special) featured on its cover a photo of 31 widows and their children.[27]

Following September 11th, there has also been an outpouring of economic support for the victims. Existing charities sprung into action and entirely new charities—dedicated to helping the survivors—were

23. *See* KAREN GROSS, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM (Yale University Press 1997).

24. *See* JANIS SARRA, CREDITOR RIGHTS AND THE PUBLIC INTEREST: RESTRUCTURING INSOLVENT CORPORATIONS (forthcoming 2002) (copy on file with author); Natalie D. Martin, *Noneconomic Interest in Bankruptcy: Standing Outside Looking In*, 59 OHIO ST. L.J. 429, 433, 35-37 (1998); Douglas G. Baird, *Essay: Bankruptcy's Uncontested Axioms*, 108 YALE L.J. 573, 577, 580-86 (1998); David A. Skeel, *An Evolutionary Theory of Corporate Law and Corporate Bankruptcy*, 51 VAND. L. REV. 1325 (1998); Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775, 797-99 (1987).

25. *See Families of September 11* (containing hyperlinks to articles about surviving families and a sense of their anguish), *at* http://www.familiesofseptember11.org (last visited Nov. 5, 2002); *see also FDNY & NYPD Widows & Family Support*, *at* http://www.nyfdwidows.net (last visited Nov. 5, 2002); David M. Herszenhorn, *At Camp, Grief Close By*, N.Y. TIMES, July 6, 2002, at B1 (discussing summer camp opportunities for child survivors of 9/11 and the difficulties these children and their surviving parents are experiencing).

26. *See e.g.*, Margaret Popper, *When You're Suddenly Alone*, BUSINESS WEEK ONLINE, Oct. 24, 2001, *at* http://www.businessweek.com.

27. Galina Espinoza et al., *Small Blessings*, PEOPLE WEEKLY, Feb. 25, 2002, at 48-74 (noting there were 50 women who were pregnant when their spouses died but only 31 agreed to be profiled and photographed).

created.[28] Entertainers, athletes, school children—it seemed as if everyone was trying to reach out to help those who survived.[29] There was so much money that there was confusion and conflict regarding the distribution of these resources.[30] Getting the public to donate was not the problem; distributing the largess in an equitable and speedy manner was and still is an issue. Indeed, the massive sums garnered has led to cynicism regarding both the recipients and the total dollars, including two cartoons by Ted Rall, one entitled "Terror Widows" and the other entitled "New York City Fire Department 2011."[31]

Thinking through the distribution of largess has also been a source of conflict for Kenneth R. Feinberg, the Special Master appointed to distribute monies under the federal government's September 11 Victim Compensation Fund of 2001. Although a Final Rule was recently issued (March 13, 2002), there is still much to be written about the criteria used to determine fund eligibility, the methods for calculating compensatory loss including individualized assessments (and the accompanying offsets for other monies received) and the amounts set for non-economic loss (with the accompanying opportuni-

28. The American Red Cross, the Salvation Army, Catholic Charities and AmeriCares, among others, have all put forth programs for the survivors and victims of 9/11. New charities and organizations include the New York World Trade Center Relief Fund, the *New York Times* 9/11 Neediest Fund, the Twin Towers Fund, The HERE New York Assistance Fund, and the New York City Police Foundation Heroes Fund. These efforts have not gone without criticism. Consider, as one example, the forced resignation of Dr. Bernadine Healy, the then President of the American Red Cross.

29. A charity concert was held in Madison Square Garden on October 20, 2001. Famous personalities including Mick Jagger, Elton John, Paul McCartney, The Who, James Taylor and Bon Jovi appeared at a benefit concert. Others appeared via satellite hook-up including Destiny's Child. VH1 broadcast the concert and revenues exceeded $30 million. *See Concert for New York City Raises over $30 Million*, Nov. 2, 2001, *at* www.mtv.com/news/articles/1450484/20021102/story.jhtml; *see also* Tyler Kepner, *Mets Donate One Day's Pay*, N.Y. TIMES, Sept. 20, 2001, at D3 (noting forty-one members of the Mets organization donated one day's salary to the New York Police and Fire Widows' and Childrens' Fund); *see also* Owen Moritz, *Pro Sports Teams Donating Like Champs*, DAILY NEWS, Sept. 21, 2001, at 50 (for a discussion of the role of professional athletes donating).

30. *See e.g.*, *Charity and Red Tape*, N.Y. TIMES, Oct. 30, 2001, at A16; Lena Sun, *Sept. 11 Charities Plan Central Database: NY Groups Seek to Speed Up Relief to Victims and Families, Cut Paper Work*, WASH. POST, Dec. 15, 2001, at A12; *see also* Jason Kerrigan, *Home of the Brave*, THE SCOTSMAN, Mar. 9, 2002, at 12 (discussing the frustration faced by survivors in obtaining the proffered benefits).

31. Ted Rall, *Terror Widows,* Mar. 6, 2002, *available at* http://www.scalzi.com/w020306.htm; Ted Rall, *New York City Fire Department 2011*, Apr. 2002, *available at* http://www.newyorkreview.com/TedRallControversy.html.

ties for a showing of extraordinary circumstances).[32] The Fund's rules force us to think through deeper values about family, labor and social structures in our society. The issues confronting Special Master Feinberg and the Fund, however, are by no means unique. Our legal system is regularly called upon to assess damages—to place an economic value on losses that seem hard, if not impossible, to quantify.[33] Law students know this. In First Year Contracts, for example, they struggle mightily with formulas for determining how to compensate for breach—pondering, for example, whether Alice Sullivan is entitled to the difference in value between the botched nose and the perfect promised nose or, alternatively, whatever monies will get her back to the status quo ante.[34] And what is her pain and suffering worth—a point made more poignant when one reads her trial testimony?[35] Legal academics, lawyers, and judges have struggled and continue to struggle with how to determine loss and what values undergird our determinations.[36] So, we need to recognize up front that assessing the value of human life, the loss of a limb, the loss of a child, the loss of environmental safety, the loss of a job, the loss of one's privacy, is difficult, perhaps impossible.

With all this discussion of compensation, there is one point that needs to be made. We have an unspoken sense that money will fix things. If we only have enough money or a correct determination of damages, everything will be fine. While money may, actually, fix things

32. September 11th Victims Compensation Fund of 2001, 67 Fed. Reg. 11,233 (Mar. 13, 2002) (to be codified at 28 C.F.R. pt. 104).

33. CASS R. SUNSTEIN ET AL., PUNITIVE DAMAGES: HOW JURIES DECIDE (The University of Chicago Press 2002). BARRY WERTH, DAMAGES: ONE FAMILY'S LEGAL STRUGGLES IN THE WORLD OF MEDICINE (Simon & Schuster 1998); Gregory C. Keating, *Articles and Essays: Distributive and Corrective Justice in the Tort Law of Accidents*, 74 S. CAL. L. REV. 193 (2000); Leslie Bender, *Tort Law's Role as a Tool for Social Justice Struggle*, 37 WASHBURN L.J. 249 (1998); Heidi L. Feldman, *Harm and Money: Against the Insurance Theory of Tort Compensation*, 75 TEX. L. REV. 1567 (1997).

34. Sullivan v. O'Connor, 296 N.E.2d 183 (1973); Ian Ayres & Kristin Madison, *Threatening Inefficient Performance of Injunctions and Contracts*, 148 U. PA. L. REV. 45 (1999) (for a discussion on how to determine damages for breach of contract); E. Allan Farnsworth, *Your Loss or My Gain? The Dilemma of the Disgorgement Principle in Breach of Contract*, 94 YALE L.J 1339 (1985); Barry E. Adler, *The Questionable Ascent of Hadley v. Baxendale*, 51 STAN. L. REV. 1547 (1999); Charlotte K. Goldberg, *Emotional Distress Damages and Breach of Contract: A New Approach*, 20 U.C. DAVIS L. REV. 57 (1986); Richard Craswell, *Against Fuller and Perdue*, 67 CHI. L. REV. 99 (2000).

35. RICHARD DANZIG, THE CAPABILITY PROBLEM IN CONTRACT LAW: FURTHER READINGS ON WELL-KNOWN CASES (The Foundation Press, Inc. 1978).

36. JONATHAN HARR, A CIVIL ACTION (Random House, Inc. 1995).

for some limited group of survivors, for most people, money alone never can and never will provide adequate recompense for the losses the survivors suffered. Special Master Feinberg correctly observed that "no amount of money can right the horrific wrongs done on September 11, 2001."[37] So, even if in a perfect world we could determine how much money people should receive, money would not be a cure-all. That said, money remains the vehicle for providing at least some relief.

The issues of recompense post 9/11 are hugely important. The survivors of the September 11th tragedies (howsoever we ultimately define eligible recipients)[38] will all likely receive some monies from one or more sources (even if it does not solve all sorrow). How much those monies will be and whether what is received is adequate and distributed to the most deserving parties are relevant issues that will be debated for years to come.[39] But, I do not want to debate these issues, at least at present. Instead, I am more concerned about what happens when the designated survivors receive monies—of whatever amount. I want to focus on how the monies that are ultimately distributed are handled by the recipients—both literally and psychologically. In the zeal to distribute, I think we have neglected to focus enough attention on an even more important aspect of the monies distributed, namely insuring that the recipients are ready to receive our largess and know how to handle that which they receive.[40] To that end, we need to assess who will be receiving the monies. We need to assess how people generally, and these recipients in particular, handle money. We need to look beneath the surface and pay attention to what money means to people. We need to look at those unsavory people and those unsavory practices that divest decent people from their money. Determining who is entitled to receive monies is the first step. Determining how much these defined recipients are entitled to receive is the second step. In my judgment, however, these two steps are not enough. We need to focus on a third step, namely how the survivors will handle the money they receive. Dealing with the money—ah, therein lies the rub.

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37. September 11th Victims Compensation Fund of 2001, 67 Fed. Reg. at 11,233.

38. Meyer, *supra* note 21.

39. *Id.*

40. I do not mean to suggest that no one has paid any attention to this issue; however, it is a subject that has not, at least until very recently, received much attention. *See* Lisa Fickenscher, *Fears of Money Scams Grow; Few 9/11 Families Seek Advice to Handle $1 Billion in Payments,* CRAIN'S N.Y. BUSINESS, Apr. 15, 2002, at 1; *see also* Kathleen Lynn, *Accountants to the Rescue; Volunteers Step Forward to Help Sept. 11 Families with Financial Planning*, THE RECORD (Bergen County, NJ), Mar. 3, 2002, at B1.

Money itself is immensely complex.[41] We often treat money as if it were a value-free concept. It is fungible. It is important to have. It is good to receive. It is necessary to function in our market-based economy. But money is much more than the currency that we need to survive. It is the means by which we define ourselves and others define us. Money is a language—the language of exchange.[42] It is how we communicate with others and how others communicate with us. It has meaning beyond the numbers that appear on a check or on a dollar bill. It is our means of addressing what we can and cannot buy, where we do and want to live, what we save or do not save, what we eat or do not eat, where we go or do not go, what we wear or do not wear, what we value or do not value.[43] So, while money at one level is just money, it is also more profoundly the way individuals and society measure each other.[44] This means, then, that how we handle money, the choices we make with the money we have are not pre-determined. So, when we get money and use money, we make choices—consciously or not. Indeed, if we are honest, we also all have feelings about money (liking it; dislik-

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41. *See* Jack Weatherford, *A History of Money* (Crown Publishers 1997) (Money has a long history, and as Professor Weatherford notes, money's meaning is nuanced. "Money constitutes the focal point of modern world culture. Money defines relationships among people, not just between customer and merchant in the marketplace or employer and laborer in the workplace. Increasingly in modern society money defines relationships between parent and child, among friends, between politicians and constituents, among neighbors and between clergy and parishioners. Money forms the central institutions of the modern market and economy . . . Money is the very language of commerce for the modern world." While I share Professor Weatherford's characterization of money as relational (to use legal terminology), I also see money as self-reflective, as revealing insights into individuals qua individuals.).

42. *See generally* Karen Gross, Debtor Education: Complex Issues on the Platter presented at the Law & Society Meeting in Budapest, Hungary (Summer 2002) (copy on file with author) (forthcoming in an expanded version as a chapter in a book titled GLOBAL PERSPECTIVES ON CONSUMER BANKRUPTCY to be published by Hart Publishing in 2003) (copy on file with author).

43. *See* OLIVIA MELLAN & SHERRY CHRISTIE, MONEY SHY TO MONEY SURE: A WOMAN'S ROADMAP TO FINANCIAL WELL-BEING (Walker Publishing Co. 2001); OLIVIA MELLAN, MONEY HARMONY: RESOLVING MONEY CONFLICTS IN YOUR LIFE AND RELATIONSHIPS (Walker Publishing Co. 1994); *see also* JOHN DEGRAFF ET AL., AFFLUENZA: THE ALL CONSUMING EPIDEMIC (Berrett-Koehler 2001); JULIET B. SCHOR, THE OVERSPENT AMERICAN: WHY WE WANT WHAT WE DON'T NEED (Basic 1998).

44. For an interesting account of the value of money to men in American society, the work of Scott Sandage is very illuminating. An historian, he has studied the effect of financial loss on men in American culture. He has a forthcoming book, SCOTT SANDAGE, FORGOTTEN MEN: FAILURE IN AMERICAN CULTURE (forthcoming). For an overview of his position *see* J.R. Romanko, *The Way We Live Now: 6-4-00: Shop Talk; I'm a Loser*, N.Y. TIMES MAGAZINE, June 4, 2000, at 38.

ing it; wanting it; needing it). As psychotherapist Olivia Mellan points out, "[Money] is tied up with our deepest emotional needs: for love, power, security, independence, control, self-worth. And, since so many of us are unaware of the emotional load money carries, we fight about it, without understanding what the battles are about or how to settle them."[45]

Along with money's complexity, we need to recognize that we actually learn very little about money in our educational system.[46] We teach better about sex (not that we do so well at that) than we do about money in school.[47] Most people, the studies show, learn about money in a wide variety of ways.[48] We learn through trial and error. Much of our understanding about money also derives from observing and experiencing how money was used in one's home. Indeed, most people do not recall productive money conversations at home growing up; instead, they recall fights or silence.[49] How one's parents dealt with the presence (or absence) of money, paid (or did not pay) bills, purchased (or did not purchase) luxury items, all affect how we deal with

45. MELLAN, MONEY HARMONY, *supra* note 43, at 4.

46. Susan Block-Lieb, Karen Gross & Richard Wiener, *Lessons From The Trenches: Debtor Education in Theory and Practice,* 7 FORDHAM J. CORP. & FIN. L. 503 (2002) (noting "there is a growing schism between what consumers need to know and what they actually understood about their rights and responsibilities in our credit-based economy. We teach remarkably little about money and credit. Without adequate financial literary skills, consumers cannot effectively compare and contrast legitimate offers of credit nor can they distinguish between legitimate and predatory lending practices."); s*ee also* Richard Newman, *American Consumers Increasingly Filing for Bankruptcy*, KNIGHT RIDDER/TRIBUTE BUSINESS NEWS, June 5, 2002.

47. There has been growing discussion about including financial literary education into the school curriculum and some states have created such a mandate. For organizations dealing specifically with this issue, *see* www.jumpstart.org (last visited Nov. 5, 2002); *see also* www.nefe.org (last visited Nov. 5, 2002); *see also* www.ncee.net (last visited Nov. 5, 2002); *see also* Lewis Mandell, IMPROVING FINANCIAL LITERACY: WHAT SCHOOLS AND PARENTS CAN AND CANNOT DO (Jump$tart Coalition for Personal Financial Literacy 2001), (Mandell has written extensively on the lack of financial literacy among American children), *available at* www.jumpstart.org/pdf/financialliteracybook.pdf.

48. *See* MELLAN, MONEY HARMONY, *supra* note 43; MELLAN, MONEY SHY, *supra* note 43; OLIVIA MELLAN WITH SHERRY CHRISTIE, OVERCOMING OVERSPENDING: A WINNING PLAN FOR SPENDERS AND THEIR PARTNERS (Walker Publishing Co. 1995); s*ee also* BARBARA STANNY, PRINCE CHARMING ISN'T COMING: HOW WOMEN GET SMART ABOUT MONEY (Penguin 1999).

49. MELLAN, MONEY HARMONY, *supra* note 43, at 38 (In her research, Olivia Mellan observed that "most of the time, direct and open communication about the family finances just doesn't happen. What does get communicated is free floating anxiety, fear and a sense of general malaise.").

money in our adult life. We also learn, maybe unconsciously, about money from society, from peers, from religion.

And, perhaps not surprisingly, there are also gender issues related to money.[50] Before I describe these differences, I want to be very clear about several points. Not all women are the same and by referencing gender issues, I am not trying to homogenize women (or men for that matter). In terms of equal protection (as a matter of Constitutional law), women have made enormous strides, and determinations of discrimination on the basis of gender require a very high level of scrutiny.[51] But, legal equality does not mean that there is practical, day-to-day equality in the lives or experiences of women. Stated differently, equality in theory and equality in action are not synonymous. Just look at the studies related to professional women and their inability to achieve job parity with their male counterparts; indeed, whole organizations exist to assist women in achieving professional success in business and law.[52]

In terms of money issues, there is a growing literature suggesting that women think about and handle money differently from their male counterparts.[53] This should not be surprising. If money is a concept deeply rooted in our backgrounds and societal values, it is not shock-

50. *See* Elizabeth Warren, *What is a Women's Issue: Bankruptcy, Commercial Law, and Other Gender Neutral Topics*, 25 HARV. WOMEN'S L. J. 19 (2002).

51. *See* United States v. Virginia, 518 U.S. 515 (1996) (holding that classifications based on gender must serve an important governmental purpose and the classification must be substantially related to those objectives). For an historical perspective on the growth of women's rights, *see* Kathleen M. Sullivan, *Constitutionalizing Women's Equality,* 90 CALIF. L. REV. 735 (2002); *see also* Rachel K. Alexander, *Nguyen v. INS: The Supreme Court Rationalizes Gender Based Distinctions in Upholding an Equal Protection Challenge,* 35 CREIGHTON L. REV. 789 (2002).

52. *See* WOMEN IN LAW: MAKING THE CASE (Catalyst, Incorporated 2001); *see also* CRACKING THE GLASS CEILING: STRATEGIES FOR SUCCESS (Catalyst, Incorporated 1994); *see also* Delia Cabe, *Beyond Glass Ceilings in Science, at* www.radcliffe.edu/quarterly/200102/cliffe-4.html. Catalyst is an organization dealing regularly with these issues. In addition to conducting studies and running conferences, Catalyst has worked on several related books. *See* www.catalystwomen.org (last visited Nov. 5, 2002).

53. *See* MELLAN, MONEY HARMONY, *supra* note 43; *see* MELLAN, MONEY SHY, *supra* note 43; Karen Gross *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV 1506 (1990); BARBARA WEISS, THE HELL OF THE ENGLISH: BANKRUPTCY AND THE VICTORIAN NOVEL, (Bucknell University Press 1985); *see* Shira J. Boss, *Women Step Up; Hunt for Financial Advice*, CHRISTIAN SCIENCE MONITOR, Mar. 8, 2002 (indicating a movement to develop financial programs and websites just for women, as part of the recognition between the different ways men and women think about and handle money); Muriel Siebert, a former superintendent of banking in New York, developed a special website for women investors. *See Women's Financial Network at Siebert, at*

ing that women—who view themselves and are viewed in society as different from men—deal with money differently.[54] For example, if money is a symbol of power and women have struggled to obtain power and are uncertain as to how to handle it once they have it, it might be expected that women's treatment of money is not the same as their male counterparts. This point is made repeatedly by Louise Le Brun in her taped speech, Magical Mystical Money, where she addresses women about how to think about money in their lives.[55] I am not debating here whether the causes of women's differing perceptions of money are socially constructed, immutable, biological or hardwired; instead, I am suggesting that differences exist and hence anyone dealing with money needs to be cognizant of them.

A few of the differences between men and women related to money are worth noting before we return to how money will be handled by the survivors of 9/11. Women at all occupational levels earn less than their male counterparts.[56] Financial planners have long observed, based on various risk assessment devices, that women are more risk averse than men when making investment choices.[57] While there are certain benefits to this approach (limiting loss), there are also key detriments, namely curtailing gain. Next, women tend to start saving later than their male counterparts, something that is particularly prob-

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www.wfn.com (last visited Nov. 5, 2002) (with a special hyperlink to information about the differences between male and female investors).

54. My work has been strongly influenced by "difference feminism." *See* Karen Gross, *supra* note 53; *see* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (Harvard University Press 1982) (leading book on difference feminism); *see also* JOHN GRAY, MEN ARE FROM MARS, WOMEN ARE FROM VENUS, (Harper Collins 1992); *see also* Emily Eakin, *Listening for the Voices of Women*, N.Y. TIMES, Mar. 30, 2002, at B9; *see also* HOFF SOMMERS, THE WAR AGAINST BOYS: HOW MISGUIDED FEMINISM IS HARMING OUR YOUNG MEN (Simon and Schuster 2000); *see also* Stanley Krutz, *Poor Boys*, July 24, 2001, *at* www.nationalreview.com/contributors/kurtz/072401/shtml.

55. LOUISE LEBRUN, WOMEN AND POWER: MAGICAL MYSTICAL MONEY (Partners in Renewal, Inc. 1997).

56. *See Census Brief: Women in the United States: A Profile,* Mar. 2000, (according to the Census Bureau as of March 2000, the median earnings of women twenty-five years old and over is 73% of their male counterparts' median earnings), *at* http://www.census.gov/prod/2000pubs/cenbr001.pdf.

57. MELLAN, MONEY SHY, *supra* note 43, at 64; *see also Women's Financial Network at Siebert, supra* note 53. It is also worth noting that there is a study suggesting that male overconfidence makes them more likely than women to trade stocks, leading to less return on their investments long term. Brad Barber & Terrence Odean, *Boys Will Be Boys: Gender Overconfidence and Common Stock Investment*, QUARTERLY JOURNAL OF ECONOMICS (Feb. 2001).

lematic given women's increased longevity compared to men.[58] Next, many women believe that others (men) should be taking care of the money issues for them, a particularly devastating belief if one is widowed.[59] Next, some women shy away from handling money because they consider it too complex or they are uncomfortable with mathematics.[60] Finally, for some women, the loss of money creates a form of aphasia; it breaks the circle of connection and leaves the woman feeling bereft.[61]

Let me turn now to the survivors of September 11th—potential recipients of governmental, private or charitable largess. There has been little detailed demographic study of those who have died and those who survived. For months, the actual number of those who died kept changing.[62] Despite the uncertainties, the data suggest that about three quarters of the deceased were men.[63] Since the median age of all victims was 39 and approximately two-thirds of the victims ranged in age between 30-49 (fewer than 5% were over 60 years old), many had spouses and children.[64] So, one can conclude that there are now many widows with children, and it is these women and children that will receive a sizable portion of the monies that are to be distributed. In

58. Barber and Odean, *supra* note 57, at 3.

59. COLETTE DOWLING, THE CINDERELLA COMPLEX: WOMEN'S HIDDEN FEAR OF INDEPENDENCE (Summit 1981) (explaining that women are raised to depend on a man and be taken care of, even when they are fully capable of standing on their own two feet).

60. SHEILA TOBIAS, OVERCOMING MATH ANXIETY (W.W. Norton and Co., 1978) (suggesting that women practice "math avoidance"). This is an issue that has come up in education as well in that girls tend to become less comfortable with math concepts when they reach middle school age, suggesting to many educators that girls need different strategies to help them with math learning (or separate classes) but that they are fully capable of learning math concepts. *See* Wendy Schwartz & Katherine Hanson, *Equal Mathematics Education for Female Students*, ERIC CUE DIGEST 78, Feb. 1992; *but see* Dennis Williams & Patricia King, *Do Males Have a Math Gene?*, NEWSWEEK, Dec. 15, 1980, at 73.

61. Gross, *supra* note 42; Karen Gross, *Perspectives on Consumer Bankruptcy Law*, NOTAS ECONOMICUS UBS, Fall 2000, at 150.

62. The initial figures suggested 6,000 deaths but those figures have steadily dropped, now reaching below 3,000. *See* Diane Cardwell, *City Refines its Counting of the Dead*, N.Y. TIMES, Nov. 25, 2001, at A43; *see also* Lipton, *supra* note 14, at A14 (indicating that the present death toll is now 2,617, inclusive of those in the four planes that crashed).

63. *See* Lipton, *supra* note 14; Robert Fresco et al., *American's Ordeal: Broad Bank of Death*, NEWSDAY, Oct. 21, 2001, at A8; *see also* Anthony DeBarros et al., *Most Victims Were Male Professionals: Many Were Parents*, USA TODAY, Sept. 27, 2001, at 2A; *see also* Stephanie Saul, *Less for Women?,* NEWSDAY, Jan. 4, 2001, at A5.

64. *See* Fresco, *supra* note 63.

terms of occupations, many of the deceased worked, not surprisingly, in the financial sector, working as brokers, traders, and investment bankers.[65] Others were support staff of varying sorts—secretaries, administrative assistants, maintenance workers, restaurant personnel.[66] Still others were government service workers—police, fire fighters, EMS workers, Port Authority staff, Pentagon personnel.[67] Still others were business people, vacationers, airline personnel.[68] They came from all walks of life. They came from a wide number of states, indeed nations.[69] They practiced different religions.[70] They had different economic safety nets at the time of their deaths.[71] Hence, the economic status of the survivors is quite different each from the other. Some started with sizable wealth and will be well-cared for by the employers

65. *See* Carl MacGowan et al., *The Lost*, NEWSDAY, Jan. 7, 2002, at A16. Names of individuals from these categories include: Fredric Gabler, Paul Acquaviva, Jon Perconti, Jr., Noell Maerz and Tom McHale. Photos of these men are included in the People article describing their wives and the children now called "small blessings" who were born post 9/11. *See* Espinoza, *supra* note 27, at 48. Certain firms were particularly devastated. Cantor Fitzgerald, a brokerage firm, lost more than 700 employees; Fred Alger Management lost 35 employees. Many descriptions can also be seen by reading the *Portraits of Grief* themselves, *available at* www.nytimes.com/pages/national/portraits (last visited Nov. 5, 2002); a significant number of the portraits can also be read in book form. *See* Raines & Scott, *supra* note 9.

66. *See HERE New York Assistance Fund*, *at* www.helprestaurantworkers.org (last visited Nov. 5, 2002) (discussing the restaurant workers who died). Mohammad Chowshury is one such worker, also identified because his wife gave birth following his death. *See* Espinoza, *supra* note 27, at 67.

67. Espinoza, *supra* note 27, at 48 (including photos of the following police officers, fire personnel and military officers who had children born after 9/11: Donald McIntyre, Peter Nelson, Stanley Smagala, Jr., Ronald Milam, Kip Taylor and Anthony Rodriguez). Websites dedicated to those in the Police and Fire Departments who died include: www.nyfdwidows.net (last visited Nov. 5, 2002) and www.nypfwc.org (last visited Nov. 5, 2002).

68. Names from these categories include David Retik and Dan Lee, also identified because their wives gave birth after their deaths. *See* Espinoza, *supra* note 27, at 54.

69. *See Lipton, supra* note 14 (noting that people from 24 states and over 25 nations were killed in the 9/11 attack).

70. *See* Ben Barber, *Powell Praises Aid in Fighting Terror*, WASHINGTON TIMES, Nov. 8 2001, at A15 (quoting Powell as stating that 10% of the victims were Muslim).

71. *See* Stephanie Strom, *9/11 Victims Need $768 Million in Aid in 2003, Study Says*, N.Y. TIMES, July 8, 2002, at B3 (noting that the average family received $90,000 in benefits but the uniformed officers received more because of charities specifically directed at them). Certain companies, like Cantor Fitzgerald, also made generous financial contributions to surviving families. *See* Shelley Emling, *Auction Bids to Relieve 9/11 Suffering*, May 30, 2002, (reporting that Cantor Fitzgerald committed to giving one fourth of their profits over the next five years to the families of victims), *at* http://www.coxnews.com/washingtonbureau/staff/emling/053002TER-AUCTION30.html.

of the deceased. Others had experienced only marginal economic survival before the attack and hence the survivors are not surrounded by either pre-existing abundance or prospective income from former employers.

As the foregoing suggests, there is no single portrait of the surviving female spouses. It is likely, however, that many were not the sole breadwinners for their families and many may not have had primary responsibility for handling the family finances.[72] So, in addition to becoming a single parent, these survivors now need to learn to handle the family's economic needs. As these women are struggling to come to terms with loss and take care of their children on a day-to-day basis, they are also confronted with bills, mortgages, and investment choices. Let me be very clear here. I am not suggesting that women cannot or do not handle money and finances. I am not suggesting that the surviving spouses cannot do these tasks. But, what I am suggesting is that these are tasks that they may not have previously handled, and that given everything else in their lives, this presents added and complex burdens. I am also suggesting that for many widows, they need added skills and support to be able to comfortably undertake money management. Stated differently, we need to do more than give the survivors money; we need to give them the skills to handle that money. We need to fill in the gaps in their economic literacy skills so that the money they receive can be handled in ways with which they are comfortable and which will enable them to both determine their goals for the money and then invest the money in ways that will accomplish those goals.

There is also another aspect of this issue. Coming into large sums of money raises a unique set of issues.[73] Obviously, what is large is a subjective assessment, and large for one person may not be large for another. Unlike monies that are earned weekly and hence distributed over a time span in pre-determined increments, many of the monies received by the 9/11 survivors will be distributed in a lump sum. Who among us is comfortable dealing with the arrival of a check of $250,000? Or $500,000? Or $50,000? At first blush, it all seems so sim-

72. *See* Fickenscher, *supra* note 40; *see* Lynn, *supra* note 40.

73. *Talk of the Nation: What to Do When You Inherit Money* (National Public Radio Broadcast, Feb. 18, 2002) (Lynn Neary hosted a National Public Radio show about what issues confront individuals who review a financial windfall (like an inheritance); s*ee also* Eric Freehling, *Big Issues Await Winners*, PANTAGRAPH (BLOOMINGTON, IL), Apr. 10, 2002, at A1.

ple; simply take the money and the rest will take care of itself. But, just ask lottery winners or professional athletes or entertainers. Many will explain that the new-found money produces a myriad of problems. Consider, for example, how many lottery winners end up squandering their earnings?[74] How many well-paid athletes land in financial trouble?[75] How many entertainers end up in bankruptcy?[76] Indeed, the problem is not isolated to these groups. A recent NPR program on *Talk of the Nation* addressed the problems confronting those who will inherit money.[77] Among the topics addressed were identifying a good money manager, recognizing the psychology of money, identifying one's own money habits and patterns.

Several examples suffice. In a recent video produced by the NFL security department,[78] three football players explain how they lost money through unsavory managers who placed them in poor and risky investments. Fred Taylor (Jacksonville Jaguars), Tony Boselli (Jacksonville Jaguars), and Antoine Winfield (Buffalo Bills) all lost money because they did not adequately police the very people they thought they should be able to trust. According to the NFL Players Association, at least 78 players have lost $42 million due to fraud in the last three years.[79] Many well-known Hollywood stars entrusted money to Dana Giacchetto who was recently convicted of civil fraud and was barred

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74. Michael Heberling, *State Lotteries: Advocating a Social Ill for the Social Good*: *Reflections*, 4 INDEPENDENT REVIEW 597 (2002) (noting that a lottery winner files for bankruptcy about once a month and one-third of all "big winners" go broke); *see also CNN Live This Morning: Hitting It Big, Playing It Smart* (Cable News Network television broadcast, Aug. 22, 2001) (where Larry Sturtz, an attorney who represents Powerball Winners, notes that recipients must plan ahead and prepare because two-thirds of all lottery winners are in bankruptcy two years after winning); s*ee also* Pam Lambert et al., *After the Jackpot*, PEOPLE, June 10, 2002, at 82.

75. *See* Edward T. Pound et al., *Money Players*, U.S. NEWS AND WORLD REPORT, Feb. 11, 2002, at 30 (exposing how some National Football League Players have fallen into debt and lost substantial amounts of money because of poor investments or poor advice, noting how athletes can easily become targets of "con" men).

76. *See* George Kalogerakis, *Red Alert: Bad Investments and Costly Hairpieces Helped Bankrupt Burt Reynolds, But He's Not the Only Star Who Has Been Down and Out in Beverly Hills: How to Go Broke on Several Million a Year*, PEOPLE, Feb. 24, 1997, at 100 (M.C. Hammer, Burt Reynolds and Kim Basinger are noted stars who have sought bankruptcy relief); *see Sexy Trio Back on Top After Bankruptcy*, JET, Apr. 12, 1999, at 60 (noting that the group TLC also sought bankruptcy relief when they had $3.5 million in debt and only $1 million in assets).

77. *Talk of the Nation: What to Do When You Inherit Money, supra* note 73.

78. Copy on file with author.

79. *See* Pound, *supra* note 75, at 3.

from the investment business by the Securities and Exchange Commission.[80] Sadly, most of Giacchetto's celebrity clientele got their money out while lesser known victims are scrambling still to be made whole.[81] Finally, as recently as Friday, March 29, 2002, the *New York Times* reported that firefighter widows had been getting investment advice from a firm named Goldis Financial Group where two veteran brokers went to prison in 2000, and the firm's record over the last decade is tarnished with questionable and illegal conduct.[82] Indeed, the company was apparently appealing to widows because, according to the *Times*, they "promised the widows a refuge from the financial planners who had begun hounding them as soon as they started collecting hundreds of thousands of dollars in charity and death benefits."[83] Indeed, Goldis is managing some money for the September 11 Widows' and Victims' Family Association.[84]

The appropriate advice to survivors seems easy: Just hire someone good to help you with the money you receive. But the task of finding the right person, as suggested above, is not that simple. For starters, one needs to have a sense of the options available in terms of advisors—let alone distinguishing among those who are "good" (as in qualified) and those who are disreputable.[85] Advisors can take a variety of

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80. Stars including Ben Affleck, Ben Stiller, Cameron Diaz, Alanis Morrisette, Courtney Cox and the band Phish were all swindled out of money by Dana Giacchetto. Indeed, Giacchetto diverted over $20 million from his clients' accounts to fund his own extravagant lifestyle. *See* Kevin O'Sullivan, *The Wolf Who Fleeced the Hollywood Lambs; Meet the Man Who Conned the Stars*, THE MIRROR, Sept. 22, 2000, at 4; s*ee also* Edward Wong & Leslie Eaton, *An Advisor to the Stars But a Fraud to All Comers*, N.Y. TIMES, Jan. 27, 2001, at B1; *see also* James Bates, *Dana Giacchetto Gets 57 Months in Federal Prison*, L.A. TIMES, Feb. 8, 2001, at C1; *see also* Anne-Marie O'Neill et al., *Canned Scam: Dana Giacchetto – the Prada-clad Moneyman Who Bilked Hollywood's Hippest – Heads for the Hoosegow*, PEOPLE, Nov. 20, 2000, at 173.

81. O'Sullivan, *supra* note 80, at 4; Wong, *supra* note 80, at B1; Bates, *supra* note 80, at C1; O'Neill, *supra* note 80, at 173.

82. David Barstow & Diana B. Henriques, *Firm that Advises Firefighter Widows Has Tarnished Past*, N.Y. TIMES, Mar. 29, 2002, at A1; Bridget Harrison & Philip Messing, *Fire Union Eyes Ties Shady' L.I. Firm*, N.Y. POST, Mar. 30, 2002, at 012.

83. Barstow & Henriques, *supra* note 82, at A1; Harrison & Messing, *supra* note 82, at 012.

84. Barstow & Henriques, *supra* note 82, at A1; Harrison & Messing, *supra* note 82, at 012.

85. There are a number of publications and websites addressing how to choose a financial advisor and the care that must be taken in making such choices. *See e.g.* Investor Advice, *at* www.investoradvice.com (last visited Nov. 5, 2002); *see also* The Motley Fool, *at* http://www.fool.com (last visited Nov. 5, 2002); *see also* Financial Advisor Magazine *at* http://www.financialadvisormagazine.com (last visited Nov. 5, 2002).

forms, although some individuals can perform more than one task. For example, there are insurance agents of varying sorts, selling differing types of insurance related financial products. These individuals are state licensed.[86] Then, there are stockbrokers (who are also licensed), who sell various securities; they can work independently or for a firm. There are also investment advisors, another group of licensed individuals, who sell a variety of financial products, including stocks, bonds, annuities, and mutual funds.[87] Then, there are accountants of varying sorts, with different certifications and educational background.[88] Then, there are financial planners who perform a wide range of advisory services, some of whom are certified by various organizations or states, but some of whom simply hang out a shingle.[89] Finally, there are lawyers, some of whom can help direct individuals to good resources and others of whom may be qualified themselves to assist with aspects of financial planning (creating a will; creating a trust; dealing with tax consequences; probating an estate; dealing with creditors).[90]

Even if one identifies the correct category of person to provide assistance, one is faced with identifying the right person. This is not simply a matter of insuring that the person has a good reputation and has not been sued, for example, for fraud or defalcation. One needs to find someone whom one can trust, with whom one can explore complex personal issues like: Should I sell the home that we occupied as a

86. *See* NY CLS Ins. § 1102 (2002); For a description of the rights and duties existing and prospective insurance brokers, *see* the New York State Department of Labor website, *available at* http://www.labor.state.ny.us (last visited Nov. 5, 2002).

87. Some are licensed at the state level and others must be licensed at the federal level. *See* Occupational Outlook Handbook, *available at* http://www.bls.gov/oco/ocos122.htm#training (last visited Nov. 5, 2002).

88. *See, e.g.,* www.thisismoney.com (last visited Nov. 5, 2002); *see, e.g.,* www.moneymanger.com (last visited Nov. 5, 2002); *see also* Suzanne Woolley, *Advice Worth the Price,* MONEY MAGAZINE, Aug. 2001, at 69-80.

89. *See Association for Financial Counseling and Planning Education*, (providing tests and certification to financial planners), *at* www.afcpe.org (last visited Nov. 5, 2002). This is but one organization performing this function. In New York, budget planners are licensed by the New York State Bankruptcy Department pursuant to Executive Law 98 16 NYL Art. XIIC.

90. Lawyers are admitted to the bar in the states in which they practice but some lawyers have specialty certifications. *See* Paul B. Geilich, *Lawyer Certification, Specialization and the Standard of Care,* 2002 ABI JNL LEXIS 77; Alec M. Schwartz, *Board Certification Rises 41% in Half Decade,* 2001 ABI JNL LEXIS 77; Steven K. Berebson, *It is Time for Lawyer Profiles,* 70 FORDHAM L. REV. 645 (2001); Buddy O. Herring, *Liability of Board Certified Specialists in Legal Malpractice Actions: Is there a Higher Standard,* 12 GEO. J. LEGAL ETHICS 67 (1998).

family and move to a smaller place in the same or a different location (a decision that involves financial, tax and inter-personal issues)? Should I go back to school and develop a job skill and who will take care of the children while I do (a decision that involves financial, tax and inter-personal issues too)? Should I set up a trust for the children? If one interviews prospective advisors, that takes time, and perhaps more importantly, psychic energy as one tells and re-tells one's story.

There is another important aspect of making smart choices about one's economic future. Survivors will be barraged with literature from a wide range of sources offering them investment opportunities and savings options. While reading about one's options is certainly wise, the delivered material is not always easy to unravel and decipher. Indeed, as everyone who receives a credit card solicitation knows, the fine print needs to be read and understood. In the field of consumer protection, we operate off a principle of disclosure and assume that consumers can read and understand that which is presented to them.[91] Unfortunately, the existing financial literacy studies demonstrate the most Americans are financially illiterate.[92] Even quite sophisticated readers can be stumped by legally mandated disclosures that are intended for their own protection.[93]

There is another aspect of all of this that merits attention. Most professionals, certainly those engaged long term after the initial effects of 9/11 have faded, want to be paid for their services. Investment advice does not come cheap. Survivors need to think carefully about how much they are willing to pay for the services they receive and how those services will be charged. Some financial professionals charge by the hour. Others charge commissions based on the products that one purchases. Others get a fee based on the size of the assets they are managing. Still others receive a fee upfront as part of the financial product acquired (the term "load" refers to that fee). It is often difficult to assess the basis upon which fees are determined and it is not always easy to confront one's advisor about compensation packages.

91. Alan M. White & Cathy Lesser Mansfield, *Literacy and Contract,* 13 STAN. L. & POL'Y REV 233 (2002); Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U.L. REV. 1027 (1996); Edward Rubin, *Legislative Methodology: Some Lessons from TILA*, 80 GEO. L.J. 233 (1991); Jeffrey Davis, *Protecting Consumers from Overdisclosure and Gobbleygook: An Empirical Look at Simplification of Consumer Credit Contracts*, 63 VA. L. REV. 841 (1997).

92. MANDELL, *supra* note 47; White & Mansfield, *supra* note 91.

93. *See* Bender, *supra* note 91; White & Mansfield, *supra* note 91.

At one level, it seems disquieting for people to make money off the misery of others. But we do it all the time. Criminal lawyers are regularly paid by clients stuck in bad situations; there is a price these clients pay for their freedom. Doctors charge for treating those with terrible diseases, also benefiting, in a sense, from the misfortune of others. Bankruptcy lawyers charge debtors—a seeming anomaly at some level. In a marvelous book called *Navigating Failure*, Professor Ed Balleisen observes an entire cadre of people ("wreckers") who benefited in the 1840's from the financial distress of others.[94] He notes, "[t]he emergence of 'wrecking' as an entrenched part of America's economy serves as a telling marker in the evolution of American capitalism. By the early 1980's, financial salvage increasingly became the work of individuals who specialized in profiting from economic distress. . .[I]n the emergence of human vultures who fed off economic carcasses around them, one sees the capacity of America's capitalistic culture to extend the entrepreneurial impulse—to find, even in the very occurrence of commercial catastrophe, the raw materials for profit."[95]

And, while discussing "wreckers", it is worth observing that even with the generosity of others, some survivors of September 11th will end up in economic distress. Some may even need to access the bankruptcy system. That process, while designed to enable individuals to free themselves from financial obligations, is not emotion free.[96] Despite over 1.45 million individuals accessing the system annually,[97] very few do so gleefully. Economic failure in a society that values economic success is hardly an event to celebrate. For 9/11 survivors, bankruptcy would mean a triple loss: loss of one's significant other; loss of the money one received; and loss of one's self-esteem. Even those who do not land in bankruptcy may struggle with their creditors. Still others may worry about debt and prospective failure, even if that is not a real-

94. EDWARD J. BALLEISEN, NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA (University of South Carolina Press 2001).

95. *Id.* at 136.

96. James Leonard, *My Bankruptcy – and Welcome to it*, 26 ANN ARBOR 37 (2002) (noting the emotional pain that accompanies a bankruptcy filing).

97. *See The American Bankruptcy Institute,* (providing the most recent statistics on bankruptcy filings which will eventually be kept and reported by the Administrative Office of the Courts), *at* www.abiworld.org (last visited Nov. 5, 2002); *Filings Hit Record High - Again,* ABI NEWS RELEASE, May 16, 2002, (noting that the figures for the last quarter, which ended March, 2002, were higher than ever before, with annual March-March filings approximating 1.5 million), *available at* www.abiworld.org.

istic threat. As one who has worked with and studied individuals in debt, I know the difficulties and pain that these individuals experience.[98]

I worry about all the survivors of September 11th. I especially worry about the women and children. I worry that our economic largess will not cure what ails them. I worry that they will be subjected to financial predators. I worry that, by simply giving money, we are assuming that the survivors' woes will be resolved. I worry that we will not do more than give money. I worry that we have not paid any attention to the handling of the money we distribute. I worry that we have not recognized the psychological aspects of money and its handling. I hope this paper has alerted the readers to the immensely complex task that confronts survivors when they receive monies. I hope this paper serves to alert charities and the government to think more expansively about compensation and to recognize the difficult tasks that lie ahead for those whom we seek to help. I hope we learn to speak the language of money and then teach that language to others. Only then will money received begin to suffice.

98. *See* Karen Gross, *Tumbling from the Ivory Tower: One Law Professor's Experiences at Legal Aid*, 17 INBRIEF 20 (Spring/Summer 1999); *see* Melissa B. Jacoby, *Collecting Medical Debts in Bankruptcy*, 51 AM. U. L. REV. 229 (2001); *see* Peter Alexander, *Divorce and the Dischargeability of Debts: Women as Creditors in Bankruptcy*, 43 CATH. U. L. REV. 351 (1999); s*ee also* ELIZABETH WARREN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT (Yale University Press 2000).