

Remarks of
U.S. Senior Circuit Judge Frank M. Coffin

Introducing Kenneth R. Feinberg, Esquire
15th Coffin Lecture on Law and Public Service

University of Southern Maine Abramson Center
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Once again - for the fifteenth time - I have the privilege of introducing a distinguished member of the legal profession whose career is an exemplar of a life in law, committed also to public service. In having this honor, I am indebted to the origin and support of this lecture series - a group of irrepressible, irreverent, and generous lawyers, my family of sixty-six former law clerks. Once again, our heartfelt thanks to all of them.

As I look back on the fourteen speakers on Law and Public Service which this series has hosted, I am struck with their extraordinary range of occupations within the vast garden of the law. Here is my reckoning: judges - 1 federal, 1 state; Justices - 1 United States Supreme Court, 1 South Africa Supreme Court (who has doubled as international war crimes prosecutor); one U.S. Solicitor General; State Attorneys General - 2 (Massachusetts and New York); professors and activists - 3; public interest practitioners - 2; one former cabinet member; and one former Senator. That they came here and shared their deepest professional and civic interests with us has been a cherished gift to our community.

Tonight expands this list with yet a different and unique mix of law and public service brought about by an unprecedented confluence of new technology, widespread vulnerability, expansion of class action litigation, and the rise of alternative dispute resolution. Our speaker tonight is perhaps the foremost veteran of what we might term this Social Perfect Storm. Dean Petigoff has touched upon the relevant highlights of his remarkable career. But now you must indulge me for sharing in some "I knew him way back when . . ." comments.

"Way back when" begins over 28 years ago, in March of 1979, when Ken was on the staff of the Senate Judiciary Committee. He had asked me to testify for the Federal Courts Improvement Act of 1979. But our working association began in 1984. I had been appointed by Chief Justice Burger to chair the Judicial Conference Committee on the Judicial Branch. As its name suggests, this committee was charged with laboring to safeguard the integrity, efficiency, and welfare of the federal judiciary. Today, our own Judge Hornby holds that position. The most urgent need facing the Committee in 1984 was somehow to persuade the Congress to restore the thirty percent inflation-caused reduction in real income of judges since 1969. Our committee was faced with a formidable task. Congressmen were not likely to raise their own salary, and if not, certainly not ours. No one else could be a catalyst and a coordinator of efforts except our Committee. And yet we could not spend government funds to lobby the Congress or publish materials supporting our cause. So it was that we turned to the private bar for help. And Ken Feinberg became a pro bono strategist and activist for our Committee. Probably much to the regret of his firm, his service was pro bono - a habit he was never able to break as his work for the September 11 Fund demonstrates.

At the time, I had no idea what, if anything else, he was doing. Only recently, when I read his book, "What is Life Worth?", did I find out. Right after we began our work together, the highly regarded New York Federal District Judge Jack Weinstein had been saddled with

thousands of cases of Vietnam veterans suffering from a herbicide containing dioxin in the form of Agent Orange. He had come to know Ken as a fellow former law clerk of Judge Stanley Fuld, an outstanding judge on New York's highest court, and in February, two months before trial, had persuaded him to accept appointment as Special Master to help the parties reach a settlement. Ken spent the next six weeks cajoling, explaining, and enticing. The day before the jury was empaneled, settlement was announced, allocating \$300,000,000 among the plaintiffs.

About two weeks later, oblivious to this new all-consuming activity, I was in Washington, meeting with Ken and others. After our meeting, Ken drove me to my hotel. I began to put things together. He was doing quite a bit of work for our committee; he was the managing partner of the twenty-plus person Washington branch of Kaye, Sholer; he was teaching criminal law at Georgetown. How, I asked him, does he do this? His answer: "I am at my office every morning at 6 A.M." Now, knowing of his Agent Orange work, I am surprised that he didn't say 4 A.M.

Fast forward five years. We finally accomplished our mission and went our separate ways. The rest is history, which we shall soon be privileged to hear. Agent Orange led to Dalkon Shield, heart valves, breast implants, asbestosis, and, earlier this year, overseeing the fund for victims of the shootings at Virginia Tech. In 1992 Ken formed his own firm to do this kind of mediation. Not only did all this activity witness a new era of mass torts but Ken Feinberg is what we might fairly call a Founding Father of a new era of lawyering, where "thinking like a lawyer" was a necessary but riot sufficient prerequisite. To me perhaps the most poignant and emotionally draining part of Ken's work with the 9/11 Fund was that of constant dealing face to face with all the plaintiffs in their deepest hour of loss. To have held more than 100 Town Hall meetings in nine months for such grieving audiences strains the imagination.

I close these remarks with a few words about another less spectacular but equally valuable example of law and public service - teaching. As one of the results of the 9/11 experience, Ken Feinberg these days is focusing more of his time and energy on helping introduce the next generation of lawyers to this new era. He now teaches at the University of Pennsylvania, Columbia, Georgetown, and Virginia. Teaching, however, has always been a part of his life. Just a few weeks ago, I received a letter from one of my former law clerks who regretted missing this lecture. She wrote:

When I was at Georgetown, Ken Feinberg taught my criminal law class and I have been a fan of his ever since. Somehow he juggled his work on the Judiciary Committee with teaching and even had the time and graciousness to accept a dinner invitation when a fellow student and I were interested in talking with him outside class.

But there is a dark side to this. Another former clerk, a full time faculty member at Georgetown, told me that Ken had taught two nights a week at Georgetown for decades. The annoying problem for the faculty is that year after year he has with monotonous regularity been voted the most popular. But - warts and all - we shall have to accept him as he is.

It is a personal pleasure and an honor to present our fifteenth Coffin Lecturer, Kenneth Feinberg, lawyer and public servant extraordinaire.