

## Compensating Victims of Disaster The United States Experience\*

*Kenneth R. Feinberg*

‘Compensating Victims of Disaster’ (it really should have a question-mark). Is it sound public policy to do so? I will start off by reminding everybody that there has never been anything quite like the 9/11 Victim Compensation Fund. Let’s start there and talk about the implications of that Fund and how it may apply or not apply in the United States, Australia or any other country.

Eleven days after 9/11 Congress passed a law in the United States signed by President Bush and the law was very simple. It said: any party who lost a loved one on 9/11—World Trade Centre; the aeroplanes, the Pentagon—or anybody who was physically injured as a result of the attacks on 9/11 could voluntarily waive their right to litigate; don’t go to court, don’t sue the airlines, don’t sue the World Trade Centre, don’t sue the manufacturer of the aeroplanes, don’t bring a lawsuit; instead, at your option, come into a very generous, publicly funded compensation system. You don’t have to: you can go file a law suit if you want. But why not instead come into a compensation fund funded entirely by the taxpayer and be compensated very, very generously, in amounts unprecedented in American history, or as far as I could tell, unprecedented anywhere? That was what the law said. The law also said that Congress would ask the Attorney General of the United States, and the President, to designate one person to design the program, implement it and administer it, and the President asked me to do it. And I did it for 33 months.

If statistics are any indication, the Fund was a clear, unqualified success. Ninety-seven per cent of all eligible claimants entered the fund voluntarily. Two thousand, nine hundred and eighty dead—their family members entered the Fund—and two thousand four hundred physically injured victims of 9/11 entered the Fund. Only 94 people decided not to come into the Fund and instead decided to litigate in court. Of those 94, here it is seven years later or so, 90 have settled. So today there are only four people, victims of 9/11, who are still litigating.

There were seven people who did nothing. They never entered the fund; they never filed a law suit. Paralysed by grief, unable to get out of bed, they allowed the fund time limits to expire, and never did anything. I visited some of them. I saw one woman. I said:

*Mrs Jones, you have six weeks to file before the fund expires. I’ll help you to fill out the application.*

*Mr Feinberg, I lost my son, go away.*

*Just sign it. You are going to get about two million dollars tax free.*

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\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra on 20 June 2008.

*It won't bring my son back. Go away.*

And she never filed. Seven people never filed or never opted to file a law suit. So in grief were they, they were unable to do either. Everybody else came into the fund, or a few people decided to sue.

How much money, publicly funded, was expended? A little over seven billion dollars. The average award for a death claim? A little over two million dollars per claim, tax free. The average award for a physical injury claim? A little over \$400 000 tax free. The awards ranged from five hundred dollars that was awarded to an individual who broke her finger at the World Trade Centre, all the way to 8.1 million dollars that was awarded a woman who survived 9/11 and came to see me with third degree burns over 85 per cent of her body. That was the range of awards.

There were about 7300 claims that were filed and we found eligible about 5300 people, dead and physically injured.

Now the statute creating the fund compensating the victims of this unique disaster was extremely problematic. For example, the statute required that I award different amounts to every claimant. That made sense because, remember, Congress was trying to divert people out of litigation. If you want to entice people out of litigation, you've got to give more money to the stock-broker, the bond trader and the banker than the waiter, the bus boy, the cop, the fireman, the soldier. In other words, by tying the program to the American litigation tort system, it guaranteed that everybody would get a different amount of money, in order to convince people not to sue. That decision of Congress to require one person, me, to evaluate every claim and give everybody a different amount of money was extremely problematic and very, very divisive.

*Mr Feinberg, my husband died a fireman at the World Trade Centre, a hero. You're giving me a million dollars less than the banker's widow who worked for Enron. That doesn't sound very fair to me. Am I missing something? Why are you demeaning the memory of my husband?*

*Well Mam, I'm not demeaning the memory. I'm not looking at the moral, intrinsic worth of anybody. I'm simply calculating awards based on economic circumstances, blah blah blah.*

That didn't sit well with people in grief. Now judges and juries do it every day in America. Compensation is the barometer used in compensating victims of loss. If you get killed in an automobile accident, if you fall off a ladder, if you take a drug that doesn't work properly, if you breathe asbestos, compensation, dollars, is a surrogate for loss, for damage. You try telling that to 5300 grieving people. That everybody's going to get a different amount of money. It's a problem.

I'm asked all the time what were the most difficult problems I confronted in designing and administrating the program. Well, the first problem was the one I just explained. I was required by law to explain that every single claimant that

everybody, your next door neighbour, is getting a different amount of money. Not only was it a problem, but it was a problem administering a program like that. If you are going to give everyone a different amount of money, it is based on what the victim would have earned over a work-life, but for 9/11. What would the banker have made, what would the soldier have made, what would the fireman have made, what would the secretary have made, if they had continued to work?

*Mr Feinberg, you ought to calculate based on the future.*

Well, you try calculating based on assumptions of what people would have done.

*Mr Feinberg, I lost my son, he was soldier at the Pentagon, but he was going to retire from the Pentagon in two years and then get a very good consulting practice and work as a private consultant for the Department of Defence.*

How do I know that? That's what you say. How do I look into a murky crystal ball, and try and calculate the future? A big, big problem.

*Mr Feinberg, I lost my daughter, she was a first year law associate, she had just graduated law school and was working for a law firm in the World Trade Centre and she was killed. But when you calculate the loss, don't you rely on her first year salary. She was going to be at that law firm for six years and then become a partner in the law firm. And in the seventh year they were going to change the name of the firm to add her name.*

*Well, Mrs Jones, you don't know that your daughter was going to ...*

*Don't tell me about my daughter. Did you ever meet her? Did you ever know her?*

*No.*

*Well how dare you. You will listen to what I say. It is not speculation. I know!*

It was very, very difficult you see so that was problem number one.

Problem number two. The law required me to also award, in addition to economic loss, pain and suffering, emotional distress. Well, I said at the outset, I am not Solomon, and I am not going to calibrate different degrees of emotional distress. Everybody who died had pain and emotional distress. Everybody gets the same: \$250 000 for the death of the victim, plus \$100 000 for each surviving spouse or dependent. That's it for non-economic loss, for pain and suffering. Very controversial.

*Mr Feinberg, if I go to court I will get two million dollars for pain and suffering.*

*You will? You'd better be careful. If you go to court you may get nothing.*

That was the second problem.

Then there was the third problem Congress created in its infinite wisdom. After you calculate the awards, you must deduct any money that the victim got from collateral sources, like life insurance, like workers' compensation benefits, like state victim crime payments. Those must be deducted before you cut the cheque.

*Mr Feinberg, I don't get it. I was going to get three million dollars from your fund but you are deducting a million dollars because my wife had life insurance. So you're only going to give me two million dollars. My next door neighbour is getting three million, because instead of buying life insurance, they went to Las Vegas and gambled it away. You are penalising me for sound financial planning. I don't get it.*

*Well Mam, the law requires blah blah blah.*

Talk about horizontal inequity. It was a serious problem.

Problem number four. The law made no distinction between American citizens and other people. They were all eligible. I believe six Australians got paid under the 9/11 fund. Six Australians died in New York City or the Pentagon or on the aeroplanes. They were all eligible. But I met in London with families from 65 foreign countries.

*I'm here to tell you that you are all eligible. Any questions?*

Up go the hands.

*Do we have to give up our citizenship to get the money?*

*No.*

*Do we have to surrender our passports?*

*No.*

*Do we have to come to the United States to get the money?*

*No.*

*Do we get the money in local currency or dollars?*

*You get the money in dollars.*

*We'll think about it. CIA. This guy must be from the CIA. You mean to tell us that your government is going to give us over two million dollars for the death of our daughter?*

*That's right.*

*No strings?*

*That's right.*

*We'll think about it. Don't call us, we'll call you.*

Now eventually they all came into the Fund. But trying to convince people that I was there to give them money raised scepticism, about the motives of the United States. Now that was a problem

Then there was this problem. Eleven people died, on 9/11 in the World Trade Centre, who were undocumented workers. Illegal immigrants. They were working illegally in the World Trade Centre. Their wives and children were all eligible. I went up to New York, to the Bronx, to the Spanish community. I translated the 9/11 application into Spanish. I translated the immigration rules into Spanish, and I met with the families up there, with the wives of the dead.

*Mrs Domingas, you are from the Dominican Republic, your husband was working illegally. It doesn't matter. I'm here to give you and your three children compensation. Any questions?*

*Will we be deported?*

*No. In fact, the United States will give you a green card allowing you to seek permanent employment.*

*Will I be put in gaol?*

*No.*

*Will you take my children away?*

*No.*

The frustration in getting people to accept this money, gratis; eventually they all took the money; they saw there was no hidden agenda.

By far the worst problem, not even close, kept me up at 3am at night. We decided, wisely, that any eligible claimant who so desired could have the opportunity for an individual hearing with me in confidence under oath to state whatever anybody

wanted to tell me. You didn't have to. Half the people didn't ask for a hearing. But the other half asked for permission to come and see me and to vent about life's unfairness. That was the biggest problem, the impact on my psyche listening to over a thousand people individually, like a truth and reconciliation commission. They came to me with their tales of woe.

*Mr Feinberg, thank you for seeing me. I'd like to start off my hearing. I was married to my wife for twenty-five years and I'd like to start off the hearing by playing you a video-tape of our wedding twenty-five years ago. I want you to see what a wonderful woman she was in happier times.*

*Mr Feinberg I'm here to tell you that my wife is dead and I want to play for you the audiotape of her calling me trapped from the 103rd floor of the World Trade Centre saying goodbye and screaming that I should take care of our children.*

*Mr Jones you don't have to play that. That won't have any bearing on ...*

*I want you to listen to what those murderers did to my wonderful wife.*

*Play the tape.*

People would come with diplomas, ribbons, medals, certificates of good conduct, reference letters, all attempting to memorialise, validate, a lost loved one. And the stories I heard.

*Mr Feinberg, I'm twenty-four years old, I'm sorry about my composure, I'm sobbing, but I want you to know I'm twenty-four years old and my husband was a fireman at the World Trade Centre and he left me with our two children six and four. And I want the money and I want it in thirty days.*

*Mrs Jones we have to go through procedures here. Why do you need the money so quickly?*

*Why? I'll tell you why. I have terminal cancer. I have eight weeks to live. My husband was going to survive me and take care of our two little children. Now they are going to be orphans. I need that money quickly, while I still have all my faculties, to set up a fund for them.*

Now you can't think up stories like this.

A 70 year old man comes to see me, crying.

*Mr Feinberg I lost my son at the Pentagon on 9/11. When the plane hit he got out of the Pentagon. He escaped. He thought his sister was trapped. He went back in to look for her. She had got out a side door. He died looking for her. There is no God Mr Feinberg, that would allow this to happen.*

A lady comes to see me, crying:

*I lost my husband at the World Trade Centre. He was a fireman. He brought thirty people to safety from the World Trade Centre. And the battalion chief said: 'Stay here, it's too dangerous.' He said: 'Chief, I've never disobeyed you but I see ten people trapped in Tower One. I am going to go rescue them and bring them back.' Mr Feinberg, he died while he was running across the World Trade Centre Plaza, he was killed when somebody jumped to their death from the 103rd floor and hit him. Like a missile. They both died. There is no God, Mr Feinberg.*

All of the stories I heard varied, every one, but there was one that kept me up at 3am, I didn't know what to do. A lady comes to see me:

*Mr Feinberg I lost my husband at the World Trade Centre, he was a fireman, and he was Mr Mom. Every day that he wasn't at that firehouse he was home, teaching our six year old how to play baseball, teaching our four year old how to read, reading a bedtime story to the two year old. He was Mr Mom. What a cook! He cooked all our meals, he was the gardener around the house, he was my right arm and I will never be the same, no matter how much money you give me Mr Feinberg. I would trade it all tomorrow just to have my husband back. My kids are without a father. I am only living for my three kids. I will never be the same. I have lost my best friend.*

She leaves. The next day I get a telephone call from a lawyer in New York City.

*Mr Feinberg did you meet yesterday with Mrs Jones with the three kids?*

*Yes.*

*Mr Mom?*

*Yes.*

*I'm not trying to cause you any trouble. But I want you to know that she doesn't know that Mr Mom had two other kids by his girlfriend in Queens, five and three. Now I am calling to tell you this because when you cut your cheque, there are not three children who survive, but five and I want you to know that I represent the girlfriend as guardian of these two other kids. I am sure you will do the right thing.*

Click.

Do you tell her about these two other kids? Tell her, look, I'm cutting cheques because there are five children, not three? Well, I never told her. I don't know the facts. Who am I to prick the bubble this woman has of the memory of her husband? I'm just trying to do this job and get this money out. We cut one cheque



to the wife and the three kids and we cut a separate cheque, in confidence, to the girlfriend as guardian of the two kids.

Now I am sure at seven years later that they know. But I didn't feel, tossing and turning, that it was appropriate for me to disclose all of this information to this woman who has a memory of her husband. There are people in this audience whom I am sure would have done it differently. But that was the toughest part of the job: the hearings.

People didn't come to these hearing to talk about money. People came to these hearing to vent about life's unfairness, and that was the most difficult part of the job.

The fund worked. It worked. The fund by statute ended on December 22nd 2003. If you didn't file a claim by that date there was nothing I could do. Two-thirds of all the applications were filed in the last six months. As the statutory deadline approached, Senator Kennedy came to me and said:

*Ken, shouldn't we extend the deadline to give people time to file?*

*Don't you dare! If you extend that deadline, people will procrastinate, people will wait, people will hum and hah, people will think it over, People won't do it. Leave the date.*

And sure enough, in the last couple of weeks people were throwing applications over the transom. We kept our offices open until midnight. The flood of applications that came in!

So that's how the program worked. Let us asks some questions about the Fund.

Why did the Fund work so well? What was it about the Fund that got 97 per cent of the people to come in, but not only that: how did you even get Congress to do a fund?

1. There was tremendous bi-partisan political support for the 9/11 Fund. It was supported by Republicans, Democrats, Liberals, Conservatives, President Bush over here, Senator Kennedy over here. It was supported by virtually politicians across the board.
2. Very generous. Two million dollars per claim on average. No appropriation by Congress. We hereby authorise the 9/11 Fund, whatever it is going to cost, let Feinberg figure it out. We do not authorise, we do not appropriate one nickel. Thank goodness. Can you imaging if I had to take from Peter to pay Paul? Instead, Congress, in its wisdom said, whatever Feinberg says, just authorise it, it will paid out of petty cash from the United States Treasury. No appropriation. That helped. If I needed more money I printed it, basically. Seven billion dollars is a pretty attractive program.
3. The absolute support of the American people. The press, everybody, editorials, wonderful, keep up the good work, get it done, what a task, good

work, don't falter, we're behind you. I still walk down airport corridors, somebody comes up to me and says: Aren't you the guy who did the 9/11 Fund? I get ready to duck. Wonderful, thank you, for what you did for the country. You have got to have a political wave of support to do compensation funds that will work.

Another very interesting thing about the 9/11 Fund is that the United States government agreed to this Fund without ever apologising for anything. To this day the United States government has never apologised for 9/11. It was a sneak attack by foreign terrorists, what are we apologising for? No apology. Compensation? Yes. We will show our solidarity with the victims. We are a compassionate nation. Pay. But don't ask for an apology, we didn't do anything wrong. There will be no apology. And yes, we will pay seven million dollars. Rather unique.

Some more questions about the Fund:

1. Was the Fund a good idea? Was it sound public policy? I think the 9/11 Fund was a fabulous idea. It was the right thing to do at the time. It was a unique response to an unprecedented historical tragedy in America, rivalled only by the American Civil War, Pearl Harbour, and the assassination of President Kennedy. The idea of the Fund was to not only divert people out of the torts system so they won't sue the airlines, but also in its generosity to demonstrate the social cohesiveness, the national solidarity of the American people toward not only American victims, but foreign victims from Australia and everywhere else. Fabulous idea, and it exhibited I think the best of the American character, and the American heritage. So my answer is I think it was a wonderful idea. But I must tell you in all honesty it is a very, very, close question.

You should read some of the emails I received when I was administering the Fund:

*Dear Mr Feinberg. My daughter died in the Oklahoma City bombing. Where is my cheque?*

*Dear Mr Feinberg. My son was on the USS Cole in Yemen, when he died when there was a suicide attack on the Cole. How come I am not eligible for your fund?*

*Dear Mr. Feinberg my brother died in the African embassy bombings in Kenya. How come I'm not eligible for your fund?*

*Dear Mr Feinberg. My daughter died in the basement of the World Trade Centre in the 1993 terrorist attacks committed by the same people. Where's my cheque?*

Not just terrorists, not just terrorism.

*Dear Mr Feinberg. I don't get it. Last year my wife saved three little girls from drowning in the Mississippi River, and then she drowned a hero. Where's my cheque?*

How do you justify, in a democracy, carving out for very special treatment unbelievable financial generosity for only a very few people who are the victims of life's misfortune, and all these other people, through no fault of their own, who have been thrown a bad curve ball, get nothing? It's very, very difficult, as a philosophic matter, to say: these people are entitled to two million dollars each. You? Nothing. It's tough. Now I think it can be justified and I told you, I think the 9/11 Fund was unique, it can be justified not from the perspective of the victims, but from the perspective of the American people. They wanted to do it, to exhibit to the world post-9/11 the solidarity and support of America for the victims all over the world. So I think from the nation's perspective it was the right thing to do, but it is a very close question.

2. Is it a precedent? Will it be replicated? Will Congress do it again? Absolutely not. This program, the 9/11 Fund, was a unique response to an unprecedented historical event. Congress has no interest in doing this again. In fact, after Hurricane Katrina, there were hundreds of people who died in New Orleans, one of the worst natural catastrophes in American history. There wasn't the slightest interest in creating a 9/11 Fund for the victims of Katrina. No. The 9/11 Fund stands alone, and should not be seen as a precedent for anything. It should be looked on as a historical aberration from the norm.
3. If Congress decides to do it again, or if any other country decides to set up such a fund, do you think it is a good idea to give people a different amount of money? No, I do not. If you are going to use public money, and you are going to compensate death, give everybody the same amount. Don't make distinctions which just fuel disagreement. If you are going to do it, whether you are the waiter, or the soldier, or the cop, or the banker, all life is worth the same when it comes to public compensation. Congress would have been much better off not tying the fund to the tort system and instead saying everybody gets \$250 000 or whatever it is. It would have made my job a lot easier. So if it is done again I suggest that everybody get the same amount.
4. Did it make any difference that the 9/11 Fund did not have with it an apology? Yes, it did. It would have been much easier when I held these hearings for the family members to know that the government was not only giving them the compensation but was formally and officially sorry for what happened. It just made my job more difficult, the absence of an apology.

Are there precedents in American history for an apology coupled with payment? Yes, one that I am aware of. You'll recall that right after Pearl Harbour in 1941 the United States government compelled relocation of American citizens of Japanese descent from California, too close to Pearl Harbour, to Arizona and New Mexico. They were forced to leave their homes and be relocated in camps in Texas, New Mexico and Arizona. Forty years later President Reagan and the Congress passed a law, and the law said: to all descendants of Japanese-American citizens who were forcefully relocated after Pearl Harbour, we hereby apologise, and we will give each descendent in a family \$20 000 as a token of our apology. And President Reagan signed that law. I don't know of another situation in American history

where the United States government formally apologised for anything. It hasn't apologised formally for slavery, it hasn't apologised formally to native Americans. The Japanese situation was a unique situation where President Reagan went along with the Congress: we apologise, and here is a payment.

But it again raises this whole question of carving out in a democracy special treatment while others are not eligible. And that's why I get back to my final point, which was my first point, which is you had better have the political will not to make compensation for disasters in a democracy a political football. It better be apolitical, it better be bi-partisan, it better have the solidarity of its citizenry, as 9/11 and Japanese compensation did, otherwise it won't work. And if you are going to compensate for disaster, or historical trauma, you better in advance answer the following basic fundamental questions:

1. Who's eligible? And who isn't eligible?
2. How much are we going to pay these people? Are we going to pay them money, or are we going to give them health care or social services, or what exactly is the 'compensation' that's going to be provided?
3. Who's paying for this? The American taxpayer put up seven billion dollars to pay 9/11 victims.
4. What procedural rights are people going to have to file with the Fund? Are you going to give them a hearing, are you going to let them go to court if they don't like the award (a terrible idea). What exactly is the process you are going to create?

Unless you deal with all these issues, and have the political will to do it, take on some other social goal, because it is just too complicated, too political, too divisive, and lacking the type of bipartisanship you need. America did it. They did it for 9/11, they did it for the Japanese/American citizens, so they did it twice in 200 and some odd years. It is not much of a precedent for anything.

It was Congress that did this. It was Congress that considered it, not the executive branch, not the courts, it was the elected representatives, like the Parliament here in Australia, debated it, and decided to do it, without objection.



**Question** — How many staff did you have?

**Ken Feinberg** — I worked pro bono without any compensation. You couldn't get paid for this job. I had eighteen lawyers on my staff. And then Price Waterhouse Coopers staffed twelve offices, opening thousands of envelopes, thousand of calculations, there were about 450 people involved. We administered the 9/11 Fund, Price Waterhouse Cooper had a contract, for \$94 million. We dispensed

over seven billion dollars. That's less than three per cent overhead. You show me a federal government program anywhere that did it that cheaply.

**Question** — You are probably aware of the issue of the stolen generations here in Australia. There are lots of lessons from what you said. Every situation is different. Do you have any comments as a general issue in regard to appropriate mechanisms for compensation? We have actually done that in one state here, in Tasmania, but there is bipartisanship on that, in terms of a national approach: it is bipartisanship opposed to it. So in one sense it sounds totally unsuited. I guess I am interested in your flow-on comment that it doesn't just have to be a specific sum of money or whether there are other mechanisms, whether other types of services targeted at a specific group is a valid mechanism.

**Ken Feinberg** — Far be it for an American to comment on the stolen generations. I don't know enough about it other than that a report was issued. But my blueprint sort of applies. Is there the political will to provide special compensation, either cash or services, to a select group of people? Do you have that political will to do so? If you do, then you've got to ask yourself: stolen generations: who's eligible? I had a terrible problem in the 9/11 Fund deciding who was eligible because the United States Congress didn't tell me in the statute who is eligible.

*Mr Feinberg, I lost my sister in the World Trade Centre. When you cut your cheque make sure you don't give any money to her brother. She hated her brother.*

*Mr Feinberg I was the fiancée of the victim. We were going to be married on September 12. I should be treated like a spouse.*

Biological parents of the victim, what do you say to that?

*That marriage was never going to take place. My son called me and said 'I am calling the whole thing off.'*

Stolen generations, like a lot of proposed ideas for compensation: who exactly is eligible? How do you define eligibility? What is the nature of the compensation? Are you going to give eligible claimants cheques, like Japanese Americans who were relocated, give a family \$20 000, divide it up any way you want.

Who is going to pay for it? Is it the Australian taxpayer? Or are there companies, or churches, or others, who bear some responsibility who should contribute?

I haven't got the foggiest idea as to answers to those questions. But when you discuss the possibility, and from what I've read it sounds like a terrible tragedy, when you get down to figuring out how you might do it, the 9/11 Fund offers some interesting elements. Based on the local circumstance here in Australia those who want some sort of plan would be well advised in advance to figure out answers to these elements if the program is not to be perceived as some sort of runaway program, without boundaries, carved out for just a very few people. Those are the issues: I had the same issues.

**Question** — What are you going to do about slavery, the descendants of slavery. You touched on it.

**Ken Feinberg** — That's an excellent question. There has been litigation pending in the United States for ten years, brought by descendants of slaves seeking damages from the United States government and from a score or more companies that historically promoted slavery in the United States. That litigation has got nowhere. The courts have said it is not defined, it is a political question, better addressed by Congress. There has been no interest in the United States, or to put it another way, the idea of compensating for slavery lacks the political bipartisanship, the political groundswell of support in the United States to justify it. There have been some informal apologies. I don't believe the government has even formally apologised for slavery; maybe it has, I don't know. But I think it highly unlikely that there will be any type of compensation program to rectify the injustices of slavery in the United States. Should there be? Hey, a terrible wrong. But try figuring out how you are going to do it in a democracy; very, very difficult.

**Question** — I am sure you have thought about this. You've obviously had to think about so much in that time. What is the value of a human life?

**Ken Feinberg** — I will respond in two ways: as a lawyer and as a priest. As a lawyer the value of a human life in America is directly tied to compensation. It's directly tied to a determination of what that life achieved in the economic marketplace. That's the way it is for 200 years in America. What is the value of a bond trader's life when he falls off a ladder and dies? Well, he was making \$500 000 a year and he was 38 years and he would have worked until he was 62. Five hundred thousand times whatever the number of years and pain and suffering and we will give you \$4 223 623. That's the lawyer, and I must say that approach is ingrained in the American character. In American history, that's the way you value lives. Economic loss, plus pain and suffering.

Now, when I put on my hat as a priest on 9/11, when each family member who came to see me, asking what is my husband's life worth, what is my wife's life worth, I would say: I am not a priest, or a rabbi, but all lives are the same. I am not Solomon. I cannot calculate the moral, intrinsic worth of any human being. So what is a life worth? The question-mark remains. I would say once again, if governments are going to get into this business, they would be advised to deal with your question by giving everybody the same amount of money, and avoid the distinction, that cannot help but trigger an emotional adverse response from the very people you are trying to help. A bad answer I think, to a very good question.

**Question** — Could I ask a question as a lawyer and a priest. In terms of the Japanese internees, could you give us an idea of the range of reactions, because as I understand they only got \$20 000 each. Presumably there would be some who said: that's very tokenistic, but there would be others who would have thought, well, how can you apologise without giving us something?

**Ken Feinberg** — Political support, basically unanimous. First of all there were no law suits that could be filed. The statute of limitations had run. Most of the Japanese-American citizens relocated had died. There was no real legal course of

action that anybody could advance. So the notion of providing gratis \$20 000 per family when the alternative was zero, was politically and socially acceptable. Obviously the \$20 000 meant more to some families than others but that accompanied with the apology was an expression by the American people that we can't rectify the past wrong but we are sorry and here is a gift, a token of our acknowledgment of responsibility.

**Question** — As an active emergency services worker, how does a fund or compensation work in terms of health, much later than the thirty-three month period? Some are suffering now; some died penniless without health benefits. Would that be a better way to compensate people? In addition, what about volunteers and their role in the response?

**Ken Feinberg** — Absolutely eligible. We paid over a billion dollars to rescue workers who developed respiratory injuries after 9/11 down at the World Trade Centre. They were all eligible. The problem we have run into in the United States today is that there were thousands of rescue workers who didn't develop any physical disease until after the fund had expired. There are currently about 11 000 rescue workers litigating in the United States. Not as a result of the 9/11 attacks but after the attacks. Working down in the World Trade Centre pit, breathing that gunk, from the collapse of the towers. Since there is no 9/11 Fund, they are all litigating, seeking compensation, damages. It is a terrible problem. Congress has been thinking about reactivating the Fund and as I have said to you, that virtually will never happen. So yes, we did pay quite a bit, and we would have paid these people, except that they didn't get sick until after the Fund had expired.

**Question** — You mentioned problems with singling out people in a democracy for special treatment. You also phrased what the fund was doing in terms of incredible financial generosity when the alternative might have been very little, but the other viewpoint is that the US government was doing something quite advantageous to itself by excluding people from litigating by entering the fund. Also obviously there was a feel-good factor of being seen to be generous and addressing a crisis. So on the balance how would you say that relates to other compensation situations?

**Ken Feinberg** — I've never been convinced that the United States government did something helpful to itself in terms of its financial exposure. I think these law suits that were brought against the United States and the World Trade Centre, on the merits, never had a prayer of succeeding. But I think you are asking a very good question, and this is a good way to end this discussion today. There would have never been a 9/11 Fund but for the desire of the United States to protect the airline industry, the World Trade Centre, from tort litigation, you are absolutely right. One should not assume this Fund was created entirely put of compassion and generosity. There was a real calculated reason for creating the Fund.

Having said that, the airlines and others could have been protected without giving seven billion dollars to a very select group of people. I think you have to look at the Fund both ways: a reasoned decision designed to prevent the airline industry from being brought to its knees, while at the same time, patriotic fervour, to

demonstrate national solidarity with the victims. You've got to look at it that way I believe.