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Take a Number

The Sept. 11 Fund Mediator, Putting a Dollar Sign on Death's Toll

By *Lena H. Sun*
Washington Post Staff Writer
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Patrick Cartier, wearing a dark blue windbreaker and jeans, stands up from his chair, clutching a sheaf of charts. His son, James, a 26-year-old electrician, died in the World Trade Center. The charts say the federal government would pay Cartier about \$320,000, valuing his son's working life at \$8,000 a year.

"How do you justify that?" Cartier asks, his voice quavering.

Moments later, his daughter, Jennie Farrell, chimes in. They are addressing a man at the front of this Manhattan auditorium, a man she accuses of renegeing on his promise to help the families of Sept. 11.

"Obviously, you have not done a good job," she says. "This plan is hurtful to the families and insulting. It's like salt on an open wound."

The man under attack is Kenneth Feinberg, special master of the federal fund set up by Congress to compensate the injured and families of those killed in the terrorist attacks. Feinberg's job is to put a dollar value on the lives of the deceased, with the size of the awards based largely on lost earning power. His mathematics of loss also include a payment of \$250,000 to cover the pain and suffering of those who perished.

That calculation infuriates Steve Campbell, a New York City police officer whose 31-year-old wife died.



Kenneth Feinberg, overseer of the Sept. 11 fund, jots some information for Dorene Hurt, who's helping the family of a Pentagon victim. (Michael Williamson - The Washington Post)

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"Your offer spits on my wife, spits on my son, on my father-in-law," shouts Campbell from the far side of the room. Jumping to his feet, jabbing his arm at Feinberg, he adds: "I gotta watch my mother-in-law and father-in-law pop pills. My son, who now I gotta rely on family stories to tell him about his mother -- and you say \$250,000? You ain't even close."

Other angry voices chime in.

"Hold it, hold it," Feinberg says, raising both hands to signal for calm.

Near the front sits a woman in a black blouse. Her husband worked at the big bond-trading firm Cantor Fitzgerald LP, which lost 658 of its 1,000 employees when the twin towers collapsed. She becomes increasingly frustrated as the meeting goes on.

"I have a 14-year-old just out of the hospital for five days," she begins, before breaking down in tears. "I have a 3-year-old that cries *every single night*, and *hits herself!* How dare you stand up there and give ridiculous and insulting remarks -- and guidelines -- and put them to us. How dare you!"

Feinberg's face is solemn. He is wearing a black, pinstriped Brioni suit, white shirt with French cuffs and a gray tie. He is waiting for her to finish, arms by his side. This meeting of about 20 people is one of more than 30 sessions that he will have with families of victims in a dozen cities across the country. In each, he must convince the families to trust him and see that the plan he has devised is fair.

The meetings in the New York area have been the toughest. At gatherings like this one in mid-January, the family members express themselves more freely, and the emotions are particularly raw.

"I'm trying to do my best," he tells the woman. His voice is low, his tone respectful.

The woman is not done.

"I'd like to see you, and your family, and your children, in our situation," she says between sobs. In the audience, one person, then two or three more, start to clap.

Saturday Sanctuary

Glorious sounds flow from the seven speakers in Feinberg's music room. On Saturday afternoons, this custom-built chamber in his Bethesda house is where he

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retreats for the live radio broadcasts of the Metropolitan Opera. It is the highlight of his week.

Feinberg, wearing khakis and a navy shirt, settles his six-foot frame into a comfortable armchair, legs outstretched over the ottoman. At 56, he is a supremely confident Washington lawyer whose line of work is resolving high-profile disputes. Feinberg believes his personality makes him a natural for the job.

"You have to be optimistic," explains Feinberg, who speaks in punchy sentences, and has a thick Boston accent. "You have to be on. You have to be assertive. You have to be convinced that there's a way to get it *settled*."

But in this room, with its acoustic wallpaper and surround-sound and thousands of indexed CDs in built-in wooden drawers, Feinberg doesn't have to be on. This is where he comes to indulge his passion for classical music and opera and tune everything else out. His wife and three grown children rarely venture into this sanctuary.

None of the victims' families can reach him here.

Today's opera is Rossini's light and frothy "Barber of Seville." The bass launches into "La calunnia," one of the opera's better-known arias. Feinberg joins in.

The aria is a catchy riff about the way a rumor grows, first soft, then louder, then out of control. The bass is singing higher and higher, and when he reaches the climax, the audience bursts into applause. Feinberg sits back in his chair, his shoulders relaxed.

For Feinberg, the pressures are enormous. Since Attorney General John Ashcroft appointed him special master of the Sept. 11 federal victims compensation fund -- a job he is doing without pay -- he has needed his music room more than ever. Since he first drafted the regulations in December, Feinberg has faced an endless barrage from victims' families, accusing him of being unfair and unfeeling.

Even after he released final rules last week that would substantially boost awards, many families are disappointed and still not sure what they will do.

Feinberg has broad authority to make decisions about the fund, estimated to cost taxpayers about \$6 billion, but no power to change some of the ground rules established by Congress. The families hate some of those rules, such as the requirement that life insurance be deducted from final awards.

But their options aren't good. Those who elect to go with his plan give up their right to sue. Under his plan, families would receive awards ranging from several hundred thousand dollars up to \$4 million, and in some very rare cases, more. If they sue, they must prove the airlines were at fault -- a process that could take years. The government also has capped the liability of the airlines, meaning the families have no guarantee they'll see more money down the road. And then there's the lawyers' fees.

To Feinberg, that uncertain future means the families have only one viable option -- the federal fund, for which he is the final arbiter. Whether they take the payouts could have as much to do with their trust in Ken Feinberg as with the final numbers.

He has mediated many complicated and emotional disputes, but this has been the most difficult. The trauma, so recent and visible, makes every step fraught with emotion. He has become the lightning rod for the families' anger and grief. After weeks of meetings, the pace and intensity are taking a toll.

At one session with about 700 people from Cantor Fitzgerald, his face drained and he became queasy. Cantor chief executive Howard Lutnick helped him sit down and drink a glass of water. He has told close friends how difficult it was for him to reply when a questioner at another meeting wanted to know whether to file one claim or two for his wife, who was eight months pregnant when she died.

His sleep, already at a minimum because of his longtime habit of rising at 4 a.m., is even less restful. Trying to relax, he read a novel for the first time in years. And at every spare moment, he turns to classical music. He tries to fit his work schedule around concerts in New York and Washington. When he is home, he closes himself in the music room, alone with Mahler, Bruckner and Wagner.

The Brockton Barrister

Feinberg likes a good fight. He's proud of being born in Brockton, Mass., a working-class town and the birthplace of boxing champ Rocky Marciano, and he travels frequently to see big fights in Las Vegas.

His father was a tire salesman. His mother worked as a bookkeeper. Kenny was a smart student who didn't apply himself until college. But from an early age, he loved to perform in front of a crowd. He did comedy skits for grammar school talent shows and starred in his high school plays.

Feinberg graduated from the University of Massachusetts in 1967 and received a deferment from his draft board to attend law school at New York University. After graduation, he became a federal prosecutor in Manhattan, where he met Diane Shaff, a stockbroker, on a blind date.

Feinberg did not make the best first impression on his date. He called to say he might be delayed because he would be in a meeting with then-Watergate special prosecutor Leon Jaworski. He showed up more than two hours late. But his charm and insistence won her over.

"I had never met anyone with that much personality," she says.

They married and moved to Washington. In 1975, Feinberg joined the staff of the Senate Judiciary Committee, then chaired by Sen. Edward Kennedy (D-Mass). Dede, as Diane is known, raised their children -- Michael, 25, Leslie, 23, and Andrew, 19. Feinberg would often get home late, bearing jelly beans for the kids who were already in bed. Sometimes, he would wake them up early in the morning -- when he got up -- so he could play with them and tell them stories about make-believe relatives, such as their Native American grandfather, Blue Moon Feinberg.

As special counsel to the committee and administrative assistant to Kennedy, Feinberg was part of a group of bright, young lawyers that included future Supreme Court Justice Stephen Breyer and future hotshot litigator David Boies. He thrived in that atmosphere, earning bipartisan respect that would help him later in his career, and made lasting friendships with people like Breyer and Kennedy.

After five years on the Hill, Feinberg joined the New York law firm of Kaye, Scholer, Fierman, Hays & Handler, eventually opening its Washington office. In 1984, a longtime mentor, U.S. District Court Judge Jack Weinstein, appointed Feinberg to be one of three mediators in the Agent Orange product liability case, forever changing Feinberg's career. In six weeks, the mediators hammered out a \$180 million settlement between several manufacturers of the chemical defoliant and tens of thousands of eligible Vietnam veterans.

"I went from being a Washington lawyer who had opened a Washington office of Kaye, Scholer, to overnight, people calling me, 'Will you mediate my case? Will you mediate my case?' " Feinberg says. "And that was it."

In 1993, Feinberg opened his own alternative dispute resolution practice, the Feinberg Group, with offices in Washington and New York. There are five other lawyers, including his younger brother David.

Although he has lived in Washington for nearly three decades, some of his strongest ties are to Brockton and former classmates. Tony Dorn, a shoe business executive, goes with him to see professional boxing. Barry Koretz, who has known him since first grade, is the architect who designed Feinberg's music room and is building his summer house on Martha's Vineyard. In his will, Feinberg bequeaths his CD collection to the Brockton public library.

In the last several weeks, old friends from Brockton have received e-mails from Feinberg's office letting them know when he is appearing on television.

"Ken wants to know," says Koretz, "how is it playing in Brockton."

Seeking Solutions

A wall in Ken Feinberg's Washington office is a showcase of some of his high points. There are framed newspaper articles about the Agent Orange settlement, the nomination of Breyer to the Supreme Court, and his role as an arbiter in deciding that the federal government should pay the heirs of Abraham Zapruder \$16 million for his film of President Kennedy's assassination.

The newest addition is a large silver frame that encloses news from his current assignment: editorials from The Washington Post, the New York Times and the New York Daily News, praising his plan to compensate the Sept. 11 victims.

In the small field of high-profile dispute resolution, Feinberg is one of the most prominent practitioners. He's handled hundreds of such cases in the last 15 years -- more than anyone else in the country, he claims -- and boasts a success rate of better than 90 percent. Lawyers who know his work praise his consummate political instincts, his ability to zero in on the nub of the issue, and his enormous energy.

Even when he has been hired by one party in a case, he has been able to win the trust of the other parties as someone they can work with to reach an overall settlement.

Feinberg is also admired by other mediators for the high fees he earns. Unlike most

mediators, who charge by the hour, Feinberg typically receives monthly retainers and performance bonuses. In big cases, his fees are in the six and seven figures.

"It's for the value that he delivers in solving these large problems," says Eric Green, a Boston mediator who helped broker the deal between Microsoft and the Justice Department. Green charges up to \$9,000 a day, but has been lectured by Feinberg about "how foolishly I charge."

Unlike some mediators, who do not want to express an opinion about what the outcome should be, Feinberg has no such hesitation. He has tremendous confidence in his ability to move people to where he thinks the zone of agreement should be.

"He has a quality of self-assurance that is formidable," says Judith Vladeck, an attorney who represented Suffolk County, N.Y., ratepayers in a controversial case involving the 1989 shutdown of the Long Island Lighting Co.'s Shoreham nuclear power plant.

"I would have liked to have punched him out a lot of times," Vladeck recalls. But in the end, she says, he was very effective.

Feinberg's approach has not always won unanimous praise. He was unsuccessful in settling asbestos cases in Baltimore in the early 1990s, and in the recent case involving Monsanto Co. and PCB dumping in Alabama.

As special master for the Sept. 11 victims fund, Feinberg is choosing to meet directly with the families, a strategy that more cautious mediators would have avoided. Given the emotions involved, others might have chosen to closet themselves in a courtroom and communicate only with lawyers representing victims.

"Here he's talking to individual claimants, and that's a very commendable act because they're not lawyers and there's a risk he will be misinterpreted," says Francis McGovern, a Duke University law professor who is an expert on accidents or injuries involving many victims.

But the same qualities that make Feinberg an effective mediator and a popular adjunct professor at Georgetown University Law School have a negative side. With the Sept. 11 families, his self-assurance and dispassionate analysis are sometimes perceived as arrogance and insensitivity.

"If you're hurting and you've lost a loved one and you've got all this personal grief, that same confidence and brass that sees him through a lot of cases may rub people the wrong way," says Green, who watched an emotional televised meeting in Staten Island between Feinberg and families.

The Next Meeting

Feinberg is driving his leased black Jaguar Vanden Plas through the evening rush hour. Next to him on the console are half a dozen of his prized Cuban cigars, Hoyo de Monterrey Double Coronas, which he is not allowed to smoke at home.

He has just returned to Washington after the emotional session in Manhattan. Now

there's a meeting with Pentagon families at the Sheraton Crystal City. It will be his third today.

Feinberg knows the job is testing his emotional endurance. He knows his role as a lawyer is much less important than what he could offer as a rabbi or shrink. But he thinks expressions of sympathy from him may seem insincere and send a false and ultimately cruel message to the families: that he will award them a million dollars each for pain and suffering.

So he is trying to make the personal connections, without showing too much emotion.

"It's very important that you level with these people, and you tell them here's what I can do, and here's what I can't do," he says. "And I think they respect you for that."

With no time for dinner, he wolfs down handfuls of candy -- Swedish Fish and Good & Plenty. Less than an hour before the 7 p.m. meeting, he drives from Reagan National Airport to his downtown office to pick up office manager Camille Biros, who has the handouts for tonight's meeting.

That leaves him 15 minutes to get back to Virginia. As they speed along the George Washington Memorial Parkway, Feinberg muses out loud about which way to go. The last time he met with these families at the same hotel, he got lost.

Biros, a longtime aide, makes a suggestion. Feinberg drives in silence. Highway signs draw closer. "Now if we got out here . . ." he says to himself. He makes a turn, then a few more. Is he lost?

"Trust me," he replies, steering the car smoothly onto Crystal City's Eads Street. Looming ahead is the Sheraton, its name in big red neon letters on top of the building.

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