

# **KEN FEINBERG, SPECIAL MASTER EXTRAORDINAIRE, SEES CREATIVE WAYS TO RESOLVE PUBLIC POLICY DRAMAS**

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## **Sound Bites from Mr. Feinberg's Remarks**

**Common denominator of TARP executive pay and BP resolution:** Every once in a while, there is a public policy dilemma that requires public policymakers to think out of the box....Agent Orange, the 9/11 Victim Compensation Fund, Virginia Tech — the conventional way of resolving these dilemmas won't work. Whether it's government or the private sector, a decision is made that we better go off and try something new. It may not work, but conventional resolution won't get the job done.

**TARP executive pay:** Congress Treasury, Feinberg, set the pay of the top 100 officials in seven [large] companies until they repay the taxpayer. Once they repay the taxpayer, they are out from under your thumb....Why shouldn't they have their pay set?..The taxpayer is a creditor of those companies. Why shouldn't there be some say in what these companies' executives get paid?

**BP \$20 billion fund:** BP agreed voluntarily. No legislation, this was a voluntary contract. BP agreed to put up \$20 billion to pay claims arising out of the spill. If \$20 billion is insufficient — and I hope it is sufficient — but if it's insufficient, BP will honor all supplementary financial obligations in the Gulf. I have the assignment of designing, implementing, and administering a \$20-billion escrow fund designed to pay eligible claims.

**Independence:** I'm totally independent. I do not answer to the Administration or to BP. It's very, very clear when I spoke and accepted this assignment, from the Administration and from BP, that I am an independent actor.

**Key factors:** With these assignments, it's creativity; it's practicality; it's coming up with incentive-based alternatives that will voluntarily channel people into a better way, win-win, of resolving these public policy dramas that some up.

**What works:** The executive compensation approach, in a very narrow realm, worked....The BP program, once it's up and running next month, it'll work. It'll work because you create creative ways to voluntarily entice people to participate with very, very little downside risk.

**Self-doubt:** On these assignments, you better have a great deal of self-doubt. I mean, you're up at 3 a.m. trying to figure these things out. Self-doubt and criticism, public criticism, go with the territory, because if I'm right that you've got to think out of the box and you've got to be a little bit different in the way you approach these problems, you don't have a whole lot of precedent to guide you. Very, very important that you have that self-doubt. Very, very important that you reach out to as many people as you need to, to get ideas, bounce ideas off people.

DAVID RUBENSTEIN: Good morning and welcome. I am David Rubenstein, President of The Economic Club of Washington. We are very pleased to have Ken Feinberg as our special guest today.

Ken and I have known each other about 30 years. We both worked together on Capitol Hill. He was working, in the 1970s, for Sen. Kennedy, and I was working for Sen. Birch Bayh. Ken had come to Capitol Hill after completing time as an assistant U.S. Attorney in New York, and also had clerked for Chief Judge Fuld in the New York Court of Appeals.

Ken is a native of Brockton, Massachusetts, a graduate of the University of Massachusetts at Amherst and NYU Law School. After he left as the chief of staff of Sen. Kennedy in 1980, he set up the Washington office for Kaye Scholer. In that position, he was appointed by Judge Jack Weinstein, a judge in the Southern District of New York, to help be a special master for the Agent Orange litigation. Ken did such a good job in getting that resolved that he was subsequently appointed for a number of other litigation matters, as special master, for example, in the asbestos litigation and the DES contraceptive litigation.

Subsequent to that, Ken started his own firm, Feinberg & Company, now Feinberg Rozen, and in that position, he was asked to do a number of other things in the alternative dispute resolution area, in the mediation area. Until recently, he was probably best known for having been the special master in the 9/11 compensation fund. And he did that pro bono, distributed some \$7 billion to more than 5,000 victims or the families of the victims of the 9/11 tragedy.

Subsequent to that, he was appointed as fund administrator responsible for the design, implementation, and administration of the claims process for the Hokie Spirit Memorial Fund following the tragic shootings at Virginia Tech University. Most recently, Ken has been doing two things. One is serving as the special master relating to compensation for those executives who received compensation under the TARP funds and, also, as I think everybody knows, he was recently appointed by BP and by the Administration to serve as the administrator for the BP \$20 billion fund.

In that context, Ken, I think, will make some remarks today about what he's doing in that regard. So I am very pleased that Ken is able to be here today. Ken and I also work together on one other matter. In my capacity as the chairman of the Kennedy Center, I get the chance to work with Ken, because of his love of classical music and opera, Ken is the president of the Washington National Opera. Thank you very much for being here, Ken. [Applause.]

KENNETH FEINBERG: I want to thank David for the introduction. It's correct. We go back a long, long way to our days working together in the U.S. Senate. And whatever we do – whatever David does, whatever I do – nothing is as difficult as chairing the Kennedy Center and being president of the opera, I assure you. [Laughter.]

David's correct when he says that I've been a special master in some tough assignments. That's a legal term, "special master." I once said to my wife, you know, I'm the special master for the 9/11 fund. [Laughter.] And she said, that's fine with me, but if anybody calls me the special mistress, there's going to be trouble. [Laughter.]

You might wonder, how can we, in a few minutes, blend the work that I'm doing for Secretary Geithner, as the special master for TARP executive pay and BP. How do you blend those two in just 20 minutes? But you can. Because if you look at both of those assignments,

there is a common denominator. Every once in a while – fortunately, not that often – there is a public policy dilemma that requires public policymakers to think out of the box.

Now, put aside the issue of whether or not you agree with the resolution of that public policy. Put aside the merits of whether or not a special master for pay is a good idea or a BP \$20 billion fund is a good idea. Put that aside for a minute, but understand that what is unique about these assignments – Agent Orange was another one, the 9/11 Victim Compensation Fund, Virginia Tech – other examples – the conventional way of resolving these dilemmas won't work. Whether it's government or the private sector, a decision is made that we better go off and try something new. It may not work, but conventional resolution won't get the job done.

Now, when it comes to Treasury and pay, my job there was made easier by the fact that Congress spoke, like in the 9/11 fund. Congress spoke and Congress said, for those seven companies that receive the most taxpayer assistance, and just those seven, somebody at Treasury ought to set their pay for the top people. Congress delegated that assignment to the Secretary, who delegated it to me. And for those seven companies – AIG, Citigroup, Bank of America, Chrysler, Chrysler Financial, GM, and GMAC – Congress said Treasury, Feinberg, set the pay of the top 100 officials in each of those seven companies until they repay the taxpayer.

Once they repay the taxpayer, they are out from under your thumb. So in 2009, I, at the request of the Secretary – I determined and calculated the actual dollars for each of the top 25 officials in those companies. And we established a regimen of pay for officials 26 to 100 in each of those seven companies, and only those seven companies. I did that in 2009. Citigroup and Bank of America, for reasons you can ask them – one being to get out from under my thumb – borrowed money to repay the taxpayer so they could get out from under my jurisdiction. And they did.

So in 2010, there were five companies. Chrysler Financial, which is in runoff, they're out from under my thumb. So today, as we meet here this morning, there are only four companies left. But as to those four companies, until they repay the taxpayer, their pay will be established by a Treasury official. Congress has spoken.

Now, I would have thought, as to that assignment, there would have been a great deal of criticism. Government regulation of private pay is none of the government's business. I would have thought that. I would have thought that would have been a big issue. Turned out to be a non-issue. Turned out to be a non-issue, I think I've concluded, for two reasons. First, Feinberg's only dealing with 100-some-odd officials. What are we getting excited about? It's a sideshow. It's a rather very limited role that I'm playing.

And if you really want to see impact on pay, don't look to what I'm doing, which is relatively modest; look to the other initiatives that are out there being promoted by this Administration. The regulatory reform bill is about to become law. Corporate governance reform. Secretary Geithner has taken the lead on the G-20, in trying to make sure that competitive pay in the United States is not disadvantaged by foreign pay.

The SEC and Commissioner Schapiro with her transparency rules, Sheila Bair at the FDIC, the Federal Reserve. There's a lot more going on, on executive pay, than my limited rule. That's one reason there hasn't been a hue and cry. The other reason there hasn't been much criticism at all is because after all, these companies survived because of the American taxpayer. So when you talk to other corporate officials, their basic approach to me is, I have no problem with what you're doing. Those companies maintained their financial stability only because the taxpayer came to the rescue. Why shouldn't they have their pay set? Don't touch my pay, but in terms of those seven companies, why not? The taxpayer is a creditor of those companies. Why

shouldn't there be some say in what these companies' executives get paid? Now because of that, there hasn't been a great deal of criticism.

I am somewhat surprised at the degree of interest in what I'm doing. Why, if I'm only establishing pay for a very small number of people, is there such interest? Well, I think there are two reasons. First, at a time of great economic uncertainty, populist fervor is very high. People are upset. Unemployment rate's high. People want to know, what are those Wall Street guys getting? It's a historical thing. It was no different in the Gilded Age or J.P. Morgan or whatever. If you look at American history, there's always a tension between Wall Street and Main Street. And what you find at this time in America, because of economic uncertainty, people are focused on pay more than they might otherwise be.

The second reason is a very practical one. I'm the only fellow in government who takes rather vanilla prescriptions about pay and actually calculates to the penny what somebody ought to make. And that, I think, allows people to hone in on, well, it's very important that compensation be tied to performance – you know, what else is new? That means that this person should make \$800,000 or \$1.8 million or \$3 million or \$600,000. For that reason, there tends to be a good deal of focus.

Now the one remaining issue I've still got to deal with, within the next week or so, under the statute, I've got to look back at what 419 companies received, in terms of TARP assistance. How much bonus money did they give out? And should there be an effort, under the statute, to try and recoup some of those funds? That project's been underway, now, for about 3 months. It involves 419 companies, not just the seven. This is a purely voluntary program. I can't enforce efforts to recoup money.

The question is, should I try and get any of it back from 2 years ago? We're finishing up that look back and those decisions will be rendered by me, sometime, I think, within the next week or so. There's been some interest among 419 companies as to whether there will be an effort to recoup any of those dollars, or impose any other, or voluntarily suggest any other remedial steps to prevent excessive bonuses going forward.

So that's pay and what makes the pay assignment so interesting is its uniqueness, the assignment from the Secretary, who has been unbelievably supportive of my role, while, at the same time, as the President has said, we are not micromanaging these companies. This is a very narrow, limited role that I am engaged in.

So that's one assignment that I juggle, these days, with a second assignment, quite different in scope, magnitude, and source, but similar in that conventional thinking won't work: BP. Now, it's altogether different from pay. The Administration and BP, on their own – I had nothing, nothing to do with it – decided to set up an alternative mechanism for resolving BP claims.

BP agreed voluntarily. No legislation; this was a voluntary contract. BP agreed to put up \$20 billion to pay claims arising out of the spill. If \$20 billion is insufficient – and I hope it is sufficient – but if it's insufficient, BP will honor all supplementary financial obligations in the Gulf. So now, I have this assignment of designing, implementing, and administering a \$20-billion escrow fund designed to pay eligible claims.

That fund will, I believe, I'm recommending, will last for 3 years. And during that 3-year period, I will evaluate, analyze, determine – independently – what individuals, businesses – small businesses, large business in the Gulf – impacted by the spill should receive.

Now, I'm totally independent. I do not answer to the Administration or to BP. It's very, very clear when I spoke and accepted this assignment, from the Administration and from BP,

that I am an independent actor. This is a program that everybody voluntarily can enter into. They don't have to. Any fisherman, any businessman, any real estate owner, any hotel, any crabber, oyster harvester, food processor, anybody can decide, I want nothing to do with this. I'd rather go to court or implement my other legal rights. Go ahead.

You're crazy to do so, though. Go ahead if you want. Because under this program, you will receive, if you're eligible, you will receive compensation without having to go to court for years, without the uncertainty of going to court, since I'll be much more generous than any court would be. At the same time, you won't need to pay lawyers and costs. So you ought to come into this program.

And until you know exactly what you'll get, to the penny, you're under no obligation to waive any right you might have to litigate against BP. In fact, as I've announced, anybody who needs money immediately, who's eligible, can come in and immediately receive a check for 6 months' emergency payment. You have to prove it, but you'll get 6 months' payment without any release. If you decide after that to litigate, you still keep the check.

I mean, who wouldn't come into this program and take that which is offered with no obligation? Then, at the end of the day, when you're offered a lump-sum payment for all present and future injury – calculated by the administrator – only then, when you know that amount, do you decide whether or not you want to take it in lieu of going to court. It is, to my way of thinking, an easy call.

But do not underestimate the problems associated with human nature. I've seen it over and over again. Do not assume everybody sees these funds – 9/11, Virginia Tech, Agent Orange, this one – do not assume that people automatically will opt into these programs. People are skeptical, angry, dispirited, worried about their financial certainty, their financial future. Human nature being what it is, you have to sell these programs.

That's why I've been spending so much time in the Gulf. You cannot do this program from Washington – impossible. You've got to go down there to Louisiana, Alabama, Florida, Mississippi. I've received tremendous support from the governors of those states. I've received support from the attorneys general. I was on the phone the other day with Attorney Gen. McCollum in Florida, very helpful. I plan to meet with the attorneys general this week or next, to meet with them, to talk about their concerns.

I'm trying to distribute the money. At the same time, I'm trying to corral the claims, you see, so the courts don't get inundated with cases. There are certain tragedies in American life where public policy seeks a creative alternative to conventional thinking. And that's what pay is about and that's what BP is about.

Now, with BP, let me just give you two hurdles to success, substantive hurdles. One, how attenuated will you allow the claims? "Mr. Feinberg, I own a restaurant in the north end of Boston. I have the best shrimp scampi in the city. I can't get Gulf shrimp. Where's my money?" Highly unlikely.

At some point, you have to say, as a matter of public policy and law, claims are so attenuated they can't be compensated. "Mr. Feinberg, I own a motel on the beach. There's oil there and I've lost costumers." Pay them; pay the client. "I own a golf course 50 miles from the Gulf. I'm down 30 percent. People aren't coming to play golf." Dubious, but where do you draw that line? That's a judgment call and you look to the law – Pollution Control Act – but the law only helps you so much. At some point, you have to make a call. So one challenge I've got – these claims are eligible; these claims are not eligible – judgment. I could be wrong. You people could draw the line somewhere else. That's one problem.

Problem number two is a corroboration problem, a problem of proof. “Mr. Feinberg, I was making \$5,000 a month as a fisherman. Now I can’t fish. Pay me \$5,000.” Okay, what do you have to corroborate? Corroborate, what do you mean? Uh, prove. It was a cash business. Nothing illegal about a cash business.

What’s your proof that you were making \$5,000? Do you have a tax return? I lost it. Okay, you lost your tax return. Do you have a profit-and-loss statement? Do you have a checkbook, check stubs, something? No, I don’t. I have no pay book. Will the ship captain vouch for the \$5,000 a month?

I mean, I cannot just pay claims. You’ve got to prove your claim. I can be very lenient as to the proof. There’s nothing illegal about a cash business. But I’ve got to have proof. And you know, fishermen, you’re getting a 1099, the law requires it. Well, you see, you create barriers to participation, which is unfortunate. And you’ve got to try and work with people – that’s a challenge – to get people to come into a fund like this.

So that is, sort of, just a brief summary. We could spend a seminar on both pay and BP, but what’s important about both of these – and Agent Orange and Virginia Tech and the 9/11 Victim Compensation Fund, which was an absolute horror to administer 11 weeks after the tragedies – what’s the common denominator of all of these programs is out-of-the-box thinking. Don’t be circumscribed by traditional ways of resolution. Don’t assume that there’s only a linear, one way to do these things.

That’s not true. With these assignments, it’s creativity; it’s practicality; it’s coming up with incentive-based alternatives that will voluntarily channel people into a better way, win-win, of resolving these public policy dramas that come up. I believe that thanks to the Secretary and the help of Neal Wolin and the people at Treasury, I think that the executive compensation approach, in a very narrow realm, worked. It really did; it worked.

I think also that the BP program, once it’s up and running next month, it’ll work. It’ll work because you create creative ways to voluntarily entice people to participate with very, very little downside risk. That’s the challenge. So I think I want to thank all of you. You don’t say no to my friend David, who has been a friend and an ally for many, many years.

I jumped at the chance to be here. This is a very, very distinguished group. I think substantively you understand, better than most, what I’m trying to do. I welcome, now, the opportunity, under David’s approach – I follow his lead – for Q&A. Thank you very much. [Applause.]

## **QUESTIONS AND ANSWERS**

**MR. RUBENSTEIN:** Now, Ken, when you first got into the business of alternative resolution decisionmaking – you were appointed by Judge Jack Weinstein in New York – how did you know him and how did he know of you? Have you ever thought, had he not appointed you, what you’d be doing now?

**MR. FEINBERG:** I knew Judge Weinstein because we had both clerked for the same judge 35 years apart. So he’s still sitting, Judge Weinstein. He’s 88. He’s still sitting in the Eastern District in Brooklyn. And he appointed me because he knew of my work for Sen. Kennedy and thought that this would be the right assignment for me, in dealing with Vietnam veterans and with the Veterans Administration.

Now, if he hadn't appointed me, would I have been just, you know, a lawyer and done other things? I assume I would have. Like all of you, like everybody in life, you can plan a little bit, but you never know the twists and turns and what will happen in your professional and personal life. So who knows what would have happened? But it worked out fine.

MR. RUBENSTEIN: When you did the 9/11, that, I assume, was very emotionally grueling because you were dealing with an enormous amount of deaths. How long did it take you, ultimately, to come up with the procedures? And when people got paid there, was it publicly known what each person got paid?

MR. FEINBERG: It took me about 6 months to come up with the procedures to pay almost 3,000 death claims – World Trade Center, airplanes, Pentagon – and about 2,300 physical-injury claims, mostly respiratory claims. There weren't many traumatic injuries in 9/11. You either got out of those planes and buildings or you didn't. So it took us about 6 months to set up the procedures. The program ran, by statute, for 33 months and all but 94 people came into the program.

MR. RUBENSTEIN: Normally, you've had legislation that would guide you about how you would do these kinds of things. You have no legislation in the BP situation. Do you need legislation, or need any guidance from any other authority?

MR. FEINBERG: Guidance is fine. Guidance, I welcome. We don't need any legislation. This is a purely private compact between the Administration and the Justice Department on one hand and BP on the other, with the goal of setting up – delegating to an administrator, me, to set it up, run it, pay it. I've asked for and received a good deal of input, suggestions as to how best to do this, but ultimately it's my call.

MR. RUBENSTEIN: You're now taking over a procedure that BP had already implemented. Could you explain what they were doing before and was any money distributed before? And who does a lot of the staff work? How many people will you have working for you?

MR. FEINBERG: I give BP some credit here. I mean, BP has paid out – on its own, pre-me – about \$200 million in claims, mostly – but not completely – wage-loss claims, a few business claims as well. BP, which is not generally in the claims processing business, has tried its best. They have retained contractors; there are roughly 1,600 people working in 35 offices throughout the Gulf processing claims, receiving claims.

All of that will transition in the next few weeks to the Gulf Coast claims facility, which I will administer, and we will continue to accelerate claims. Hopefully, emergency claims will be paid within a couple of days of requesting emergency funds and thereafter, over the next 3 years, we'll process claims.

The challenge is going to be, you know, long-term injury. Fisherman, you have a fishing boat. I think that you'll be unable to fish for a year, so here is a lump sum check. "No, no! I think I won't be able to fish for 5 years." If you think that, don't take the check. Go about your business and litigate or do what you will.

MR. RUBENSTEIN: Suppose somebody does take a check, they think they're going to be out of business or harm for a year and then it turns out that it was more than a year. Can they come back or do you have to make one check and that's it; that's all they get?

MR. FEINBERG: Don't come back. If you sign this release you are releasing your right to come back. But, A, if you don't think that the period that I'm covering in this check is worthwhile, A, don't take it; you haven't lost any rights; B, come back next year. The fund is going to be in existence for 3 years.

So come back next year and you'll have a better feel for this; or, C, take the check. And I think this is a generous check. I've checked. I've looked around; I've asked people. We think you'll be able to fish or what have you. That is entirely voluntary and entirely it's up to you.

MR. RUBENSTEIN: Now, on 9/11, did you review every single payment and will you be reviewing every single payment here?

MR. FEINBERG: I signed off on every single payment and I will do so here. Now, when you sign off on these payments, that doesn't mean that every single individual or every single business crosses my desk. You come up with a methodology. You know about this: economic loss, lost profits, business interruption claims. You come up with a methodology for shrimpers, for charter boats, the motels, for restaurants, and that methodology must be consistent. You can't be biased in favor of one or another; you've got to apply the same methodology.

So once you start streamlining this process, it becomes relatively easier to resolve these claims because, basically, you have a process in place that is systematic and consistent. The other problem you've got to worry about is fraud. Nothing undercuts the credibility of these programs more than fraud. In 9/11, we had 7,300 applications. Thirty-five were fraudulent. Fabulous. We had checks; we watched it – internal and external auditing. With BP, I've got the help of the Criminal Division of the Department of Justice – very, very important. And we'll have internal auditing and investigatory procedures.

Now, the final point you make on your last question: Will everybody in the public know – in 9/11 or in BP? Is all of this information public? Of course not. Of course not. If I disclosed to government – state, local, federal – the names of every individual: their address, how much they received – nobody would sign up for these programs. This is private, individual, proprietary information.

I'll provide some general statistics, aggregate statistics, about the claims, how long it takes, how much money is being distributed or for what types of claims. But the individual information must remain private and confidential. Otherwise people will not sign – “You mean to tell me my information is going to Washington, to the Internal Revenue Service or to the – absolutely not.” It would be a huge barrier to voluntary participation.

MR. RUBENSTEIN: How long – how many people will it take to administer the BP program. You have hundreds of people to help process these claims.

MR. FEINBERG: Well, we subcontract out. Right now, as I said, BP hired 1,600 people in the Gulf. I don't think we need that many people. Once we systematize, you're going to be able to file a BP claim entirely online if you want, electronically, never even go to a claims office. So we'll streamline and systematize the process. We're in the process of doing that now.

BP didn't do that. BP was putting Band-Aids on the problem, as you would expect in an emergency situation. The best news for my purposes in the last week is that the oil stopped. Until the oil stops, it's very hard to corral the claims; you don't know how many claims, whether the oil will reach a certain area. Now that the oil has apparently been stopped, the leak has stopped, it will make it a lot easier and quicker to get a handle on the universe of claims.

MR. RUBENSTEIN: Now, on the 9/11 situation, you did that pro bono. And how were you able to spend that much time pro bono? You do have to make a living. You just gave that as a gift to the country?

MR. FEINBERG: I gave it as a gift to the country, but let's be a little bit more pragmatic. When I did the 9/11 fund, I was a special government employee, as I am now with TARP. So I'm not an official government employee. I'm allowed in both 9/11, pro bono, and TARP, pro bono, to maintain a private practice while at the same time working in these public policy areas. So I was allowed to benefit from my law firm practice – I didn't practice very much – but to benefit from my law firm practice while at the same time taking on these assignments.

MR. RUBENSTEIN: Now, and BP, if somebody has insurance – it's a business or individual – has insurance and they come to you for a claim and you pay them, can they still collect insurance, or you don't care about their insurance?

MR. FEINBERG: I certainly do care. It's an offset. To make them whole, if they've received money from their insurer, especially if they've received state assistance, unemployment compensation, for example, use that as an example. "Mr. Feinberg, I was earning \$5,000 a month. I've received \$800 a month from the state of Alabama. How much can I get?" You can get \$4,200. We're going to offset the \$800 that you've already received from your insurer. Now, your insurer, the state certainly has a subrogation claim to recoup the \$800 and we'll deal with that."

MR. RUBENSTEIN: So if somebody comes to you for a claim and, subsequently, a year later, they file for insurance, you wouldn't know about that.

MR. FEINBERG: It's too late. You've been paid and if you got your insurance later, well, good luck to you.

MR. RUBENSTEIN: Of all of the assignments you've taken in this area, what would you say has been the most difficult to get your hands around and what was the most emotionally grueling?

MR. FEINBERG: Oh, they're all emotionally grueling. The 9/11 fund was a horror because Congress passed that law 11 days – days – after 9/11. So you were dealing with people distraught. "Mrs. Jones, I'm here to give you \$2 million." "You're here to give me \$2 million. Mr. Feinberg, they haven't recovered my husband's body from the World Trade Center and you're here to offer me money? How dare you offer me money? I want my husband back."

BP, do not underestimate, when you go down there. "Mr. Feinberg, I don't know what I'm going to do. I'm a sixth-generation oyster harvester. And my oyster harvesting days are

over. What are you going to do for me, Mr. Feinberg? How can money possibly replace the heritage that my family built up here in the Gulf?”

This job, all of these assignments, require a certain perspective, emotional perspective, on what people are going through. No matter how creative you may be in coming up with a program that reasonable people would claim is very reasonable and makes a lot of sense, you have still got to sell it to people who are emotionally distraught. And that is a big part of what I have to do here.

MR. RUBENSTEIN: Now, when you are the most famous – up until recently, I guess – the most famous person who came from Brockton, Massachusetts – Rocky Marciano also came from there. But does everybody else from there speak with that same accent that you have?

[Laughter.]

MR. FEINBERG: Last week in the Gulf I told somebody in Biloxi, Mississippi, that I speak like a southerner – a South Bostoner. I think most people who live in Brockton and in Massachusetts – some of you are from Massachusetts – we sort of cultivate the accent. It sort of comes in handy. [Laughter.]

MR. RUBENSTEIN: Where did you get your love of classical music and opera?

MR. FEINBERG: It is really an interesting story, my love of classical music. When I was 9 years old, I began studying in Brockton for my bar mitzvah. And the cantor was –

MR. RUBENSTEIN: Four years early?

MR. FEINBERG: Yeah, well, I was a slow learner. [Laughter.] And the cantor in my synagogue in Brockton was an émigré from Vienna and a world-class expert on opera and classical music. Again, just serendipitous, he got me interested as a youngster in opera. In some of these assignments, opera and classical music saved my sanity; I can tell you that.

MR. RUBENSTEIN: Is it true you have a room in your house where you play classical music at great volumes, and this is how you relax now?

MR. FEINBERG: It's one way. Technologically, I've got a nice system with thousands of operas and CDs and classical music. I mean, some people read; some people go play softball. There are a lot that go to the movies. You do what works best for you in terms of trying – 9/11, I must have gone to the Kennedy Center or the Carnegie Hall or the Metropolitan Opera 3 nights a week. Otherwise, you'd go mad doing these assignments. You've got to find some outlet.

MR. RUBENSTEIN: Have you ever considered going into the opera as a performer or not yet?

[Laughter.]

MR. FEINBERG: Well, now that you're the head of the Kennedy Center, David – [laughter].

MR. RUBENSTEIN: We can make arrangements. [Laughter.]

MR. FEINBERG: You'll see. You'll see.

MR. RUBENSTEIN: All right. We'll work that out. We have some time for some questions from our guests. Here is a question right here.

Q: Alan Murton [sp] from George Mason University. Ken, what did you learn from the Victims Compensation Fund that was most relevant to what's going on in BP?

MR. FEINBERG: What you learn from all of these assignments, including BP, is how diverse human nature is. The reaction of people is as diverse as human nature itself. Some people are angry; some people are skeptical; some people are uncertain; some people are incredibly hopeful: "Thank goodness you're here to help." One size does not fit all, and you better be prepared for a wide range of emotional reactions to what you're trying to accomplish.

MR. RUBENSTEIN: Other questions?

Q: Ralph Everett, Joint Center for Political and Economic Studies. Do you think that \$20 billion will be adequate?

MR. FEINBERG: Well, I hope \$20 billion will be adequate. The good news is that BP has publicly stated that if it is inadequate, they will continue to honor all additional financial obligations that confront them. I hope it's adequate, but remember the \$20 billion is not just for me and the private program. Out of that \$20 billion come government claims. So depending on the size, eligibility, scope of those government claims, as well for cleanup – that \$20 billion is all-encompassing.

So we'll just have to play it out over the next few months. We'll get a much better handle if the oil is gone, stopped – the leak. We'll get a much better handle on the claims, and then a lot will depend on where I define the eligibility criteria, how many people come in to prove their claim. We'll have to play it out. I hope it's enough.

MR. RUBENSTEIN: Ken, you said in 9/11, I think 54 people chose not to go through –

MR. FEINBERG: Ninety-four.

MR. RUBENSTEIN: Ninety-four chose not to go through your process. How did those people actually fare in the litigation system, do you know?

MR. FEINBERG: Ninety-four people opted out of the program; 3% opted out of the program. All of their cases were settled.

MR. RUBENSTEIN: So you don't know whether they did financially better or worse? Nobody knows?

MR. FEINBERG: No one knows, but I'm sure they didn't do as well. Not after they went to all that trouble, waited that many years, paid their lawyer costs of litigating. I can't believe they did as well.

MR. RUBENSTEIN: Most the people in the 9/11 case, did they hire lawyers when they came into your system? Will the people who come into the BP process need lawyers or not?

MR. FEINBERG: They don't need lawyers. They're more than welcome to have lawyers. I like lawyers. I'm a lawyer. [Laughter.] If you want a lawyer, by all means, have a lawyer. Really. But in the 9/11 fund, the ATLA – the American Trial Lawyers Association stepped up and provided pro bono lawyers for 1,500 people. I think we'll have some sort of pro bono program in BP as well, if you want a lawyer.

MR. RUBENSTEIN: Can you please describe the infrastructure or the team that you need to build to administer the BP fund? Where do you get these people? How do you subcontract and so forth?

MR. FEINBERG: Well, I've received a fair number – I'm a very popular guy these days – from vendors interested. You've got to hire people locally, really. I got a letter from Sen. Vitter the other day from Louisiana: "Can I hope the \$20 billion will go in local banks in the Gulf?" You hire local people who are trusted by the community in terms of receiving the claims, sitting with them, helping process the claim, evaluate it. So BP hired a claims adjustor firm from Hammond, Louisiana, that has spread out over the Gulf.

So as we're setting up the infrastructure now. I'm focused primarily – not exclusively, but primarily – on local people. I met with the mayor of New Orleans a couple of weeks ago. He's great. "Ken, it's great, we're sure you're going to do a good job. We want your headquarters here in New Orleans. That's where you should be headquartered." Sen. Landrieu and Governor Riley and Governor Barber and others – Governor Jindal – all very, very helpful but all urging: hire local, hire local, hire local.

MR. RUBENSTEIN: In your TARP role, how did you find the executives when they were pleading for additional compensation or not to be cut back? Were they effective generally or not in their pleas to you?

MR. FEINBERG: I think they were effective. They weren't pleased. I think they were fairly effective. I didn't deal with too many CEOs. Some. Bob Benmosche came to see me every other day. But he was pretty effective. Mostly you dealt with vice presidents for human resources, you dealt with general counsels, you dealt with consultants. We worked it out.

It was difficult, but I think it was fairly collegial. People read the statute. They saw what I had to do. I think it worked out okay. Treasury was particularly helpful. Neal Wolin, the Deputy Secretary of the Treasury, was sort of, at my request – I would go and see him – and Neal was just – and the Secretary – very, very helpful in this whole project.

MR. RUBENSTEIN: Ken, the \$20 billion escrow fund – is that safe from claims from other BP creditors? In case of that, what do you do with that \$20 billion while you're waiting to pay the claims? Is it sitting there or is it to be invested in anything or is it just not yet actually in an escrow?

MR. FEINBERG: Is this the Carlyle Group asking this question? [Laughter.]

MR. RUBENSTEIN: I'm sure we could get a good return for it.

MR. FEINBERG: It's not on my watch. It's interesting. The escrow fund – the \$20 billion – I'm just drawing on it. I don't know – as we sit here today, I think the Administration and BP have still not finalized the escrow, so I can't really give you answers to those questions because that's beyond my jurisdiction. I am going to draw on those monies, but I'm not a custodian of those funds. I don't really have much of a say right now in the terms and conditions of the fund.

MR. RUBENSTEIN: As you know, there are some views that not just BP might have been at fault. Some of the people who constructed the rigs and so forth. But that's nothing that you're worried about. And other people may – other companies may have to contribute to this \$20 billion or those people will deal with BP separately?

MR. FEINBERG: I have nothing to do with anybody but BP. Clearly, those companies don't have to contribute. They may want to at some point. Not on my watch. Somebody who comes into this voluntary program and gets a check from the fund is not releasing anybody but BP, an ultimate check. Remember, the emergency money, you don't even have to release BP – an incentive to come into the program and corral the claims. So we'll see what others do.

Right now I'm focused on setting up the program, trying to get as many as possible to participate, give them emergency payments without any obligation at all and only downstream, when you file for a lump-sum check, will you then make a decision whether you want that check in return for releasing BP only or whether you want to reject the check and litigate.

MR. RUBENSTEIN: Were you approached first by BP and almost simultaneously by the Administration? How did that come together?

MR. FEINBERG: BP twice, two meetings with BP. And then rather suddenly, all within 2 weeks, the Administration through Justice Department, Tom Perrelli, the Associate Attorney General – Justice has been fabulous here. They have been very, very cooperative in trying to set this program up. Tom was the point man.

Those are the people I have dealt with. I haven't dealt with anybody at the White House. It's been Tom Perrelli and the Associate Attorney General's office at Justice and it's been BP in Houston. And Tom Milch at Arnold & Porter here in Washington.

MR. RUBENSTEIN: Ken, can you describe your earlier – when you were working for Sen. Kennedy – you're now the head of the Kennedy Library? Is that right?

MR. FEINBERG: Right.

MR. RUBENSTEIN: And in that capacity –

MR. FEINBERG: My day job.

MR. RUBENSTEIN: Your day job. And in that role, you're doing what with the Kennedy Library? Because the 50<sup>th</sup> anniversary of President Kennedy's inauguration is coming up.

MR. FEINBERG: That's right. The JFK Library Foundation – I'm the chairman of the board of the foundation. The library, of course, is a national presidential library funded by the taxpayer. But there's a foundation that I chair, probably about 60 members of the board, designed to perpetuate the legacy of President Kennedy.

And the 50<sup>th</sup> anniversary is coming up. There are various projects underway. There's going to be a great event, thanks to you and others at the Kennedy Center, celebrating the 50<sup>th</sup> anniversary of the election of President Kennedy. And our charge there is to sort of perpetuate the legacy and the memory of what President Kennedy stood for, for the country.

MR. RUBENSTEIN: All right. My last question will be, Ken, do you ever have any self-doubt? [Laughter.] You seem to be a very confident person. Is self-doubt ever one of your emotions?

MR. FEINBERG: On these assignments, you better have a great deal of self-doubt. I mean, you're up at 3 a.m. trying to figure these things out. Self-doubt and criticism, public criticism, go with the territory, because if I'm right that you've got to think out of the box and you've got to be a little bit different in the way you approach these problems, you don't have a whole lot of precedent to guide you. Very, very important that you have that self-doubt. Very, very important that you reach out to as many people as you need to, to get ideas, bounce ideas off people.

That's why with 9/11 John Ashcroft, the Attorney General – fabulous – helped me on that. Virginia Tech, President Steger at Virginia Tech. Executive pay, Secretary Geithner and Neal Wolin bounce ideas – at my request. They don't go interfering. They're there if I want help. And now BP – Justice Department, BP, the attorneys general, the governors. Haley Barbour – “Ken, I have one bit of advice for you: Get the money out. Time is the enemy. Time is the enemy.”

Very, very sound advice. So self-doubt goes with the territory. It's a good thing – just make sure it doesn't paralyze you. At some point, you make a decision. Others might make it differently. You make that decision; move on.

MR. RUBENSTEIN: Ken, on behalf of other Americans – I don't speak for the whole country – but I do want to thank you for what you have been doing for our country and in helping in this resolution and on the 9/11 matter. And we have an antique map of the District of Columbia that we'd like to present to you on behalf of The Economic Club of Washington. I want to thank you very much for coming today. Thank you.

MR. FEINBERG: Thank you. [Applause.]

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### **Kenneth R. Feinberg**

Mr. Feinberg was appointed by the Secretary of the Treasury to serve as the special master for TARP Executive Compensation 2009-2010. In this capacity, he is responsible for determining annual compensation packages for senior corporate officials at companies that received the most taxpayer financial assistance. He was recently appointed by the Obama Administration and British Petroleum to administer BP's \$20 billion fund to pay for damages from the Gulf oil spill. He was also appointed by the Attorney General of the United States to serve as the special

master of the Federal September 11th Victim Compensation Fund of 2001. In this capacity, he developed and promulgated the Regulations governing the administration of the Fund and administered all aspects of the program, including evaluating applications, determining appropriate compensation, and disseminating awards.

Mr. Feinberg was the fund administrator responsible for the design, implementation and administration of the claims process for the Hokie Spirit Memorial Fund following the tragic shootings at Virginia Tech University. Mr. Feinberg was also retained by Liberty Mutual Insurance Company and Zurich Insurance Company to design, implement and administer an Alternative Dispute Resolution Program for resolving insurance claims arising out of Hurricane Katrina and other hurricanes in the Gulf region.

Mr. Feinberg is an attorney and one of the nation's leading experts in mediation and alternative dispute resolution. He is the managing partner of Feinberg Rozen, LLP. Mr. Feinberg received his B.A. *cum laude* from the University of Massachusetts in 1967 and his J.D. from New York University School of Law in 1970, where he was Articles Editor of the *Law Review*. He was a Law Clerk for Chief Judge Stanley H. Fuld, New York State Court of Appeals from 1970 to 1972; Assistant United States Attorney, Southern District of New York from 1972 to 1975; Special Counsel, United States Senate Committee on the Judiciary from 1975 to 1980; Administrative Assistant to Senator Edward M. Kennedy from 1977 to 1979; Partner at Kaye, Scholer, Fierman, Hays & Handler from 1980 to 1993; and founded The Feinberg Group, LLP in 1993.

Mr. Feinberg was a member of the Presidential Advisory Commission on Human Radiation Experiments from 1994 to 1998; the Presidential Commission on Catastrophic Nuclear Accidents from 1989 to 1990 and the Carnegie Commission Task Force on Science and Technology in Judicial and Regulatory Decision Making from 1989 to 1993. He is currently a member of the National Judicial Panel, Center for Public Resources, and previously chaired the American Bar Association Special Committee on Mass Torts from 1988 to 1989. He is also a national arbitrator for the American Arbitration Association.

Mr. Feinberg is currently Chairman Elect of the Board of the RAND Institute of Civil Justice, is Vice-Chairman of the Board of Human Rights First and is a member of the Board of the Bazelon Center for Mental Health Law.

Mr. Feinberg has had a distinguished teaching career as Adjunct Professor of Law at the Georgetown University Law Center, University of Pennsylvania Law School, New York University School of Law, the University of Virginia Law School and Columbia Law School. He has also taught as a visiting lecturer at UCLA Law School, Vanderbilt Law School, New York Law School and Duke Law School. Mr. Feinberg is currently President of the Washington National Opera.