

## Remarks of Kenneth R. Feinberg

Atlantic Legal Foundation

Tuesday, November 14, 2023

I thank my dear friend of some forty years, Chuck Hagel, for his kind and generous introduction. I first met Chuck during the 1980s, when he was working at the Veteran's Administration, and I was the Court Special Master in the Agent Orange class action. His skill and political savvy proved essential in achieving a settlement for thousands of Vietnam veterans. Our friendship grew. I was the first financial contributor to his successful Nebraska Senate campaign. His career defines patriotism: United States Senator and Secretary of Defense in the Obama Administration. His wise counsel has had a direct and lasting impact on our Nation. And, I might add, on my personal career as well. I am grateful for his introduction this evening.

And it is a special pleasure for me to acknowledge the presence of Chuck's wife, Lilibet. Also present is my wife Dede Feinberg, who has achieved acclaim over the years in advancing and protecting Israel and Jewish causes around the world. She currently serves on the Board of the Jewish Democratic Council of America.

And a special shout out to my colleague of almost 50 years, Camille Biros. Camille is the foremost expert in our Nation when it comes to the design and administration of compensation claims programs -the 9/11 Fund, the BP oil spill Fund in the Gulf of Mexico, One Fund Boston following the Boston Marathon bombings and so many others. She has been a critical lifeline in compensating innocent victims of tragedy.

Finally, a few words of praise for two other important friends responsible for this evening's dinner. Dan Fisk, the Chairman and President of the Atlantic Legal Foundation, has been the individual most instrumental in the success of the Foundation and its mission. And my friend over the past four decades, Joe Hollingsworth, who took an idea about the law – the importance of assuring that sound science and research be required in our state and federal courts – and made it the law of the land. His law firm today is without equal in mastering the complexities of Daubert evidentiary hearings. These hearings require our courts to consider only credible evidence linking drugs, chemicals, and medical devices to alleged individual injuries. Joe is a credit to our profession and our Nation.

It is a particular honor for me to receive this 33rd annual award from the Foundation. I find myself in elite company – Gov. Frank Keating, Senator George Mitchell and last year’s honoree Michael Rich of the RAND Corporation, to mention just a few. It is gratifying because this Foundation has been in the vanguard of promoting creative and long overdue reforms to our American legal system. The rule of law is an aspirational objective, a goal. It can only be achieved if the American people, as consumers of civil justice, have confidence in how our judges, lawyers, and experts deliver on its promises. For decades the Foundation has proposed reforms to redeem those promises.

A few personal observations. For many years the Foundation was a relatively lonely voice when it came to the subject of court reform. Its focus on the inefficiencies and runaway costs of our trial courts - along with the uncertain results of the litigation lottery - were often met with criticism, or ignored as irrelevant. To the critics, the Foundation’s reforms threatened long established rules and traditions.

But times have changed. Many of the Foundation’s early warnings are now being addressed. It was not an accident that, after the tragedy of 9/11, the Congress completely bypassed the courts and, instead, established the September 11 Victim Compensation Fund to pay innocent victims of the tragedy. And after the BP Deepwater Horizon oil rig explosion, President Obama ordered BP to establish the Gulf Coast Claims Facility to compensate victims of the oil spill without direct court interference. In these and other examples our policymakers – copying a chapter of this Foundation’s charter – created alternative compensation procedures. Rather than tinker with trial court defects, the courts, Congress and the President have implemented new creative methods to deliver justice in a more efficient, timely and cost-effective manner.

Judges of our federal and state courts continue to make greater use of Special Masters, Mediators and Claims Administrators (like Camille). The goal - to streamline our civil justice system, temper the presence of strident advocacy, and improve how we dispense justice in a more certain manner.

The effort continues. There are still challenges today that must be met. The Supreme Court’s reluctance to expand class action rules to promote consolidation of mass claims (often favored by defendant companies); the failure of our trial courts to enforce Daubert principles of proof by keeping “junk science” from the jury; the ongoing issues surrounding forum shopping; the reluctance of judges to take advantage of Civil Rule 706 by designating their own “court experts” – these and other issues must continue to be addressed. The Atlantic Legal Foundation - with its credibility and record of success - continues to play a leadership role when it comes to these and other similar reforms.

The American people must have confidence in the rule of law and how our courts – federal, state and local – dispense justice every day. Our Nation is the envy of the world in many areas both domestic and foreign. But the idiosyncrasies and characteristics of our civil justice system - with its emphasis on adversarial combat, delay, duplicative costly trial practice, and uncertainty of result - are not looked upon as a system to be emulated elsewhere. There is much work to be done. And I'm sure this Foundation will continue to maintain its important role in advancing the challenging subject of justice reform.

I thank Dan, Joe, and the Foundation itself for this evening's Award.