NEW YORK LAW SCHOOL

Sidney Shainwald Public Interest Lecture

New York Law School
April 29, 2009

The Honorable Jack B. Weinstein
United States District Court for the
Eastern District of New York

For Sybil Shainwald, endowing the Sidney Shainwald Public Interest Lecture Series is a meaningful way to pay homage to the extraordinary life and career of her husband. For New York Law School, it is an opportunity to further Sidney's efforts and to honor a man who was invaluable in both his life and work.

Program

Richard A. Matasar
Dean and President
Welcome

Sybil Shainwald, Esq.
Introductory Remarks

Kenneth R. Feinberg, Esq.
Introduction

The Honorable Jack B. Weinstein
United States District Court,
Eastern District of New York
Keynote Speaker

The Honorable Jack B. Weinstein

Jack B. Weinstein was born in 1921 in Wichita, Kansas. He attended Brooklyn College at night while working for a trucking firm during the day, receiving a bachelor's degree in 1943. After serving as a lieutenant in the U.S. Navy during World War II, he earned a law degree from Columbia University in 1948. He was a law clerk to Judge Stanley H. Fuld of the New York Court of Appeals. He then opened his own law office, through which he advised various state legislative committees and conducted a litigation practice. He assisted in writing briefs for the NAACP in the *Brown v. Board of Education* case of the 1950s and in the "one man, one vote" litigation of the 1960s. He was the reporter for the committee to revise New York civil practice.

For many years, Judge Weinstein was a faculty member of Columbia Law School, and lectured at other law schools. From 1955 to 1957 he served as county attorney for Nassau County. In 1967, President Lyndon B. Johnson nominated him to the bench in the Eastern District of New York on the recommendation of Senator Robert F. Kennedy. Formerly chief judge of the district, he conducts a full docket as a senior judge.

Managing each case with equality and efficiency in mind, Judge Weinstein appears in business suits instead of judicial robes and often meets with parties and litigants around a conference table in open court. A pioneer in the area of mass torts, he has handled and streamlined complex class actions and multi-district litigations related to Agent Orange, asbestos, DES, and most recently, Zyprexa. He has presided over numerous organized crime trials, including the prosecutions of Vincent Gigante, Louis Eppolito and Stephen Caracappa (known as the "mafia cops"), and the recent trial of Charles Carneglia. He has sought to humanize and reform federal sentencing practices and procedures. In 2003, Judge Weinstein volunteered to consider and decide 500 *habeas corpus* cases on a backlog in the Eastern District. He has authored many teaching casebooks, multi-volume treatises, and numerous articles, books, and legislative reports. Most recently, he published *The Role of Judges in a Government Of, By, and For the People: Notes for the Fifty-Eighth Cardozo Lecture* (2008).

Kenneth R. Feinberg

Mr. Feinberg was 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. He was also Fund Administrator of the Virginia Tech Hokie Spirit Memorial, responsible for designing and administering an $8 million fund following the Virginia Tech shootings.

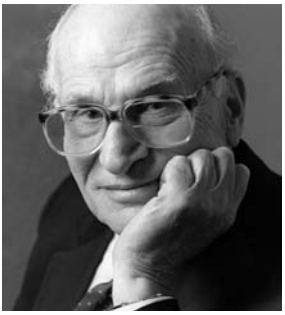
Mr. Feinberg is an attorney and one of the nation's leading experts in mediation and alternative dispute resolution. He is the managing partner and founder of The Feinberg Group, LLP.

Mr. Feinberg has had a distinguished teaching career as Adjunct Professor of Law at New York Law School, 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.

Mr. Feinberg has been Court-Appointed Special Settlement Master, mediator, and arbitrator in thousands of disputes involving such issues as mass torts, breach of contract, antitrust and civil RICO violations, civil fraud, product liability, insurance coverage, and various commercial and environmental matters. Mr. Feinberg was also one of three arbitrators selected to determine the fair market value of the original Zapruder film of the Kennedy assassination and was one of two arbitrators selected to determine the allocation of legal fees in the Holocaust slave labor litigation.

Mr. Feinberg was a member of the Presidential Advisory Commission on Human Radiation Experiments from 1994 to 1998 and the Presidential Commission on Catastrophic Nuclear Accidents from 1989 to 1990. He is listed in "Profiles in Power: The 100 Most Influential Lawyers in America" (*National Law Journal*, April 4, 1994; June 12, 2000) and was named "Lawyer of the Year" by the *National Law Journal* (December, 2004). He is the author of numerous articles and essays on mediation, mass torts, and other matters and has recently published his book entitled, *What is Life Worth? The Unprecedented Effort to Compensate the Victims of 9/11* (PublicAffairs, 2005).

Sidney Shainwald



If every man is the architect of his character, then Sidney Shainwald was a master builder: a man of great integrity, humor, intellect, charm, kindness—with a life-long commitment to social justice. Sidney was that rare individual—a dedicated idealist—a man of many accomplishments who not only conceived and discussed ideals but attempted throughout his life to see that those ideals became realities.

Although Sidney had several distinguished and successful careers during his life, for almost fifty years he was associated with Consumers Union (CU). He viewed the consumer movement as a powerful force for the benefit of the economically and socially disadvantaged. Sidney said it best:

> Consumers Union was never really just a job; it always was and always will be a way of life with me. As far back as my college days, I was interested in Consumers Union not only as an organization for which I worked but as the major force in the consumer movement. I am pleased to have had the opportunity to serve Consumers Union. I would like to think that I have made some contribution to its growth, direction, and policies.

For Sidney, social benefit was the desired result; Consumers Union was the mechanism through which to achieve it. It was much more than a magazine; it was a movement for change.

In 1937, while still a student at City College but already an impassioned advocate for justice, Sidney went to work as head of the Accounting Department at CU. The concept was novel; the movement was embryonic but Sidney believed it would follow the path of the labor movement and become "a powerful social institution."

From the beginning, CU was interested in economic problems of consumers. The charter had taken a multi-disciplinary approach to the problems of assessing technology; the reason for the birth of the organization was both scientific and social. The founders of the organization believed that product testing was also a means to organize consumers to promote their welfare. CU's goal was not merely

to evaluate products, but to "initiate, to cooperate with, and to aid group efforts of whatever nature seeking to create and maintain decent living standards for ultimate consumers."

As Sidney later wrote:

> The CU then is not to be confused with the CU of today. There were 148 subscribers, 10 members of the staff whose weekly salary totaled $100, 350 square feet of office space, and a devoted Board of Directors. From its inception, CU's Board and staff were composed of idealists and iconoclasts. Divisiveness was exacerbated by financial difficulties, necessitating a constant interplay among the Board, the management, and staff on daily policy matters.

The problems were many; the rewards hardly ensured. Sidney tested suntan lotion on the roof of CU's office; brought home toothpaste for his family to rate; and staffed the CU exhibit at the 1939 World's Fair. He was a visionary who wrote his thesis in 1939 entitled *Consumer Products Testing Organizations: A Comparative Analysis*, the first such study ever done.

After passing his CPA exam and serving in the South Pacific where he taught math to his fellow soldiers and edited the newspaper, Sidney became a partner in a public accounting firm, sharing his desk and political views with I.F. Stone. Deeply committed to the arts, he represented some of the greatest artists and entertainers of the twentieth century, including Marc Chagall, Jacques Lipchitz, Naum Gabo, George Grosz, Peggy Guggenheim, Mike Todd, Zero Mostel, David Merrick, Albert and Mary Lasker, Josh Logan, Dinah Shore, Eddie Albert, London Film Productions, Tricolor Films Ltd., Magnum Photos, and the Palestine Economic Corp. He was also the accountant for and astute investor in several shows and movies including *Fanny, The Bells Are Ringing,* and *Around the World in Eighty Days.*

CU had always been Sidney's client and in 1960, when asked to work exclusively for the organization, he took a substantial reduction in pay in order to proselytize the only gospel he cared about, social justice. He was an Interim Executive Director, an Associate Director, an ex-officio member of the Board of Directors, CU's liaison to the Consumer Association of Canada, a representative to the Consumer Federation

of America, and a delegate to the International Organization of Consumers Unions throughout the world. From Holland to Hong Kong he gave speeches and presented papers to the budding and burgeoning consumer organizations which he visited worldwide. As CU continued to grow through the years, the *Chicago Tribune* noted that "Sidney Shainwald, associate director, and CU's financial brains since the year after its founding in 1936, said circulation of *Consumer Reports* reached a peak of 2 million in 1974."

During Sidney's tenure, CU established three advocacy offices, became involved in the environmental movement, launched *Penny Power,* a magazine for children, fostered education efforts, and continued to expand its interest and considerable resources on vital economic, social, and health issues.

Consumerism has become a household word, and CU, which has been termed a unique social invention, is now inextricably woven into the fabric of society. Some seventy-three years after its founding, Consumers Union is the only social reform organization born in the Depression to have survived. At the time of Sidney's retirement, the American prototype had been copied in over forty-six countries.

In 1980, Sidney paid tribute to the founding president of CU, with whom he worked for more than forty years. He spoke on behalf of the staff: "If Consumer Reports were to make a product evaluation of Colston Warne, it might read something like this: 'A unique model, a once-in-a-lifetime production, exceedingly efficient. . . . Definitely top-rated and the best buy ever.'" The same can be said for Sidney Shainwald.

It is a great privilege to have the Honorable Jack B. Weinstein as the 2009 Sidney Shainwald Public Interest Lecturer.

Excerpts from Judge Jack B. Weinstein's Book

The Role of Judges in a Government Of, By, and For the People: Notes for the Fifty-Eighth Cardozo Lecture

Judge Jack B. Weinstein has been on the Federal Bench for forty years and as Senator Edward M. Kennedy has written is "renowned for his intelligence, dedication, integrity, and sense of compassion . . . . and he's often been called the nation's judicial conscience."[1]

Judge Weinstein has delineated three elements of a just decision: facts, law, and empathy. His analysis of the law and facts can be found throughout the book that is available at this lecture. As Judge Weinstein states with regard to the third element:

The final element in resolving legal disputes is vital in enforcing the rule of law, though it is frequently unnoticed, ignored, and even derided as lawyers and judges focus on the first two—facts and law. It is the component of empathy—of humanity, of the human spirit, and of the feelings we have for our fellow men and women. It gives life and meaning to our work as lawyers and judges.

There is hanging in our judges' conference room in the Eastern District of New York a large copy of the last known picture of Lincoln taken a few days before his death—haggard, with sad eyes in deep sockets, reflecting his connection to all humanity and its travails. The photograph is a continuing reminder to each of our judges of his or her bond with all those whose lives depend upon our empathy and sagacity.[2]

* * * *

Some judges and lawyers seem to ignore this passageway to the heart and spirit of the law. Up in high towers, many look for the bottom financial line or the rigid imposition of technical niceties, ignoring the effect of their work on individuals' well being. More involvement by all of us in efforts to assist and to know the disadvantaged might help.[3]

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[1] P. 3.
[2] P. 25.
[3] P. 26.

In our mass tort cases, delayed decision and frustration of rights is endemic. Powerful stories of human tragedy have echoed in my court through the years: women damaged by their mothers' ingestion of DES, who are now unable to have children of their own; Vietnam veterans, frightened by the effects of herbicides on their progeny; men struck down by dreaded lung cancers because, when they were still teenagers they were exposed to asbestos while building the ships with which we won a war; persons suffering from AIDS because of tainted blood used in transfusions; and mothers driven to become drug couriers by cruel traffickers and poverty. To see those who live such stories is to understand why the law must be sensitive to human needs.[4]

We must try to bridge the gap between us and those who need us. We must try to open a dialogue between the heart of the law and the heart of those who seek justice from us.[5]

* * * *

We must recognize, of course, that some people are less able than others. There is an inherent anomaly in attempting to protect both equality and freedom: economic freedom leads almost invariably in a society such as ours to greater inequalities. But, need our courts support inequalities as great as those now extant in our increasingly rigid class society? How to moderate inequality while encouraging freedom of expression and enterprise remains a pervasive issue in our democracy; the appropriate balance fluctuates with changing social views and technology.

It is appropriate for a judge to ask, "Does my decision unnecessarily widen the gap between rich and poor, advantaged and disadvantaged?"

* * * *

As we weigh each of these three criteria—facts, law and empathy—we strive to accomplish the often near impossible: procedural and substantive fairness and the integration of mercy and justice for the people, for all the people we lawyers and judges are charged with protecting under the Rule of Law.[6]

[4] P. 26.
[5] P. 27.
[6] P. 28.

Sidney Shainwald Public Interest Lectures
(2004 to Present)

April 22, 2004

Kenneth R. Feinberg, Esq.

Special Master, September 11th Victim Compensation Fund

The Feinberg Group, LLP

June 1, 2005

Senator Edward M. Kennedy

Senior Senator from Massachusetts

May 2, 2006

The Honorable Stephen G. Breyer

Associate Justice, United States Supreme Court

October 11, 2007

The Honorable Chuck Hagel

Senior Senator from Nebraska

April 29, 2009

The Honorable Jack B. Weinstein

United States District Court, Eastern District of New York

Public Interest at New York Law School

Service is an essential component of the New York Law School experience. The Office of Public Interest and Community Service was established to further the Law School's demonstrated historic commitment to the public interest. The Office emphasizes the importance of service as an integral part of the education of law students, just as it will be part of their professional lives. It sponsors a variety of programs and opportunities for students to engage in pro bono activities and has established working relations with existing community service providers in TriBeCa and other neighborhoods of the city, as well as with advocacy groups addressing the needs of individuals and groups who are underserved by the legal profession.

This Office works closely with several of the Law School's centers: the Justice Action Center, with its focus on issues of civil rights and liberties and international human rights; the Center for Professional Values and Practice, with its emphasis on professionalism and ethics as well as appropriate methods for dispute resolution; and the Center for New York City Law, with its focus on addressing legal issues in an urban setting.

Public Interest Projects

Projects of the Office of Public Interest and Community Service include the operation of a Volunteer Income Tax Assistance (VITA) site, providing free tax filing to low-income clients, and a Child Literacy Program, where law students read to children in the New York City public elementary schools. Another project has students working with Professor Karen Gross in an extensive Financial Literacy Program to educate consumer debtors seeking bankruptcy relief, as well as in a Bankruptcy Assistance Program, where students assist indigent clients who are considering filing for bankruptcy.

Public Service Certificate

New York Law School has created a Public Service Certificate to recognize and honor students who show their commitment to public service by devoting time and energy to the community. Students who perform at least forty hours of voluntary service while at law school, or who have a combination of at least thirty hours of voluntary service and have another thirty hours of public interest work done through a work-study placement, clinic, or externship, may receive a Public Service Certificate, which will be noted on their transcripts.

Notes

Notes

The Sidney Shainwald Public Interest Lecture
185 West Broadway
New York, NY 10013-2921
T 212.431.2800
F 212.791.2150
E alumni@nyls.edu
www.nyls.edu/alumni

NEW YORK
LAW SCHOOL