

FEINBERG: The rig exploded on April 20th, 2010, the Macondo well in the Gulf of Mexico. ...Within a week after the explosion, I received a telephone call from BP's outside lawyer, Tom Milch of Arnold & Porter in Washington. I knew Milch from my 9/11 fund days, and when he had taken a couple of cases pro bono on 9/11. He said he was the managing partner of Arnold & Porter, was one of BP's outside lawyers, and an expert in environmental law. He called and he said, "You know, this is my brainchild. I had suggested to BP that it set up a 9/11 type fund. I think this would be a very good idea. The President, Obama, is leaning on BP to do something other than just litigate. And BP... has said to me, what might we do? And I proposed a 9/11 type fund. Are you available to design and administer it?"

I said I was. He said he'd get back to me. So he was my initial contact.

Within two weeks, I get another call from Milch inviting me to Houston to meet with BP's North American leadership about the idea of a 9/11 type compensation system. And I... flew down to Houston with Milch. And I met with the senior people at BP. And the BP people asked the questions you would expect: "How would you design such a facility? What would be the criteria? What would be the damages methodology? What would be the proof requirements? What would be the process? What would it cost? How independent would I be? What would be expected of claimants if they received money from this facility?" -- the standard questions that I receive any time you think about setting up a system that is in parallel to the traditional litigation system.

They also made it very clear to me that if they did agree to do this, I would need the approval of the Administration, because they were about to sign an agreement between the Administration and BP, establishing a fixed fund to pay claims arising out of the spill. ...I met with the BP people in Houston on two occasions, video conferenced with them on two other occasions before they gave me the green light to meet with the Department of Justice representing the Administration.

So they were onboard, one side, (BP). They agreed, "You'd be the right man, Ken, to do this. We've decided we want to do it for a lot of reasons. And now we've told the Administration we're ready to do it and we want Feinberg. And now you've got to go meet the Administration."

So I went over to the Department of Justice... I met with Tom Perrelli, the associate Attorney General. That took about five minutes because Perrelli knew all about me from 9/11 and from the pay czar. I had just the previous months been the Administration's pay czar involving executive pay arising out of the TARP bailout. So this was a rubber stamp. ...the Administration had selected me 16 months before to do the TARP program at Treasury. So the minute Perrelli saw my name, he knew, "Geez, he's one of us. We have no problem with Feinberg. We welcome him." You know? ...[T]hey quickly said fine.

So I was asked by BP and Justice to design, implement, and administer the program pursuant to an escrow agreement signed between the Administration and BP posting a \$20 billion dollar pledge to pay any and all eligible claims arising out of the spill.

...From the time I first was approached by Milch until internal vetting by BP, followed by Justice Department approval, ...I would say was about...six weeks. And from the time Justice signed off until the announcement was seven to ten days.

...From the moment Milch called me, even before BP, [before] I even went to Houston, I was thinking, how do we set this up? And how might it work? There were a series of external questions pertaining to the atmosphere surrounding the creation of such a program, and a series of internal nuts and bolts questions pertaining to how the program would function in practice.

The external questions were questions that I wrestled with like the following.

- **The volume of claims** -- This was an oil spill that captivated the entire public. BP was out front with the Administration promising to do something about it to the tune of \$20 billion. ...unlike any other compensation program I had ever designed or administered, I envisioned here an unprecedented flood of claims in the millions. Why not? Why wouldn't anybody file a claim, asserting that they had been victimized... by the spill? Whether you're a bather, a fisherman, a hotel, a shrimper, a crabber, whether you live in Louisiana, Texas, Canada, the world, why not file a claim? There is \$20 billion dollars. So one of the external problems I confronted was the sheer magnitude of what I would be inheriting.
- **The second external question was expectation** -- Here was a situation ripe for claimants' grandiose expectations. BP is an international oil company, not exactly a favorite of the world in terms of labels...[S]omebody was responsible for this. It was a horrible tragedy that killed 11 rig workers. So here we have expectation fueled by, "We're innocent, completely innocent. It's an oil company that caused this," all caught up in the whole question of whether Gulf of Mexico oil drilling is even a good idea as a matter of public policy. Here are the politicians clamoring for help for their own constituents. Here is BP putting full-page ads in the world press promising to make victims whole. Here is BP fronting \$20 billion -- unprecedented, never been anything like this... Here is the Administration promising it won't be Katrina and Brownie, "We will get you paid." So the expectation, the political environment, along with the volume of claims is fueling this.
- **A third, external event that made this very, very challenging [was that I inherited a claims program established by BP]** -- Even after I was selected and began my work... approximately four months went by from the date of the explosion until my assumption of responsibilities, four months! During that four-month period, here comes Feinberg. Here comes Feinberg. Any day now, Feinberg will take over. BP had already set up a claims program in the Gulf. BP had already established 35 claims offices throughout the Gulf, the BP claims offices, from Mobile Bay to Key West, Florida, from Key West, Florida to New Orleans and Louisiana on to Alabama and Mississippi. So by the time I took over with a new program, I inherited a claims program established by BP that had already paid out \$400 million to 80,000 people in a very haphazard, inconsistent, disparate, and murky way. So I faced another external problem which I had never faced before, inheriting an already existing malfunctioning program that was receiving a great deal of criticism from constituents and from politicians in the Gulf.

- **The final external problem I faced was the fact that as I was designing and administering the program, the Gulf, the oil was still spewing from the broken rig** -- It was very, very difficult for me to design a program and determine time limits and volume and answer some key internal design questions until I knew that the rig had been capped, that the oil was no longer leaking, so that we had a better idea of the magnitude of the spill. And while I was designing the program in the summer of 2010, I confronted the reality that until the oil stopped, I couldn't very well get a handle around the scope of the problem. And that was an additional, conceptual problem I confronted, but a very real one that influenced the design of the program. You can't very well tell people they have X days to file a claim when the X day will begin to run from a certain date and you don't even know what that date will be because the oil is still coming out of the well.

Those were some of the external problems that I confronted when I took on the assignment.

The internal problems were much more conventional, conventional in the sense that it's the same problem you confront any time you [set up a compensation program] – it is the same problem they'll confront if Carnival decides to set up a Concordia ship compensation program, or a 9/11 program, or a Virginia Tech program, or an Agent Orange program. The internal problems are the same. They are both substantive and structural, internal problems.

The substantive problems are a checklist. I can check them off, just change, from 9/11 to BP:

1. **In setting up the program, what are the eligibility criteria?** Who is eligible to file a claim? Very important – It is one thing to say that a fisherman who fishes in the Gulf can file a claim. Can a restaurant on Hanover Street in Boston file a claim, claiming that it can't make Shrimp Scampi because it can't get Gulf shrimp? ...Even with my eligibility criteria, in 16 months, we have received well over a million claims from 50 states and 35 foreign countries...
2. **Even if you're eligible to file, what is the methodology that will be used to calculate damages?** What is the formula? How does one determine? Now, there are 11 dead. That's 11 too many, but this was largely not a death or a physical injury program like 9/11 or Virginia Tech. This was a lost income, lost wages program. People were harmed by their inability to fish or the inability of tourists to come to the Gulf. ...So what is the methodology that will guide people in trying to calculate what they'll get if they enter the program.
3. **Even if you're eligible and there's a methodology, what are the proof requirements?** There is a huge underground economy in the Gulf. Are you going to require proof in the form of tax returns or proof in the form of profit and loss statements, or W-2s or 1099s or checkbooks? How do you prove you claim? No matter what the eligibility and methodology requirements, there is a very practical problem here of proof. If your only proof is a handshake, trust me, I couldn't fish, but I have no documentation, I mean, I'm a fiduciary for the \$20 billion. You've got to have some proof.
4. **If you are going to get paid, what is your obligation?** Are you going to release from suit just BP? Or are you releasing from suit everybody? "If I take your check, Mr. Feinberg, can I go sue Halliburton and Anadarko and Transocean? Or in return for this check, am I giving up my right to sue everybody?" ...[T]he release from suit [was] very important to BP.

5. **Is there enough money?** Is \$20 billion enough? And if not, what does the program say and what does BP say about the rest that is needed? Is there enough money there to pay everybody?
6. **How long will this facility remain in place before it is terminated or expires?** How long should this facility be up and running to process claims?

So those were some of the internal problems. Now, there were other structural internal problems. When you've got over a million claims, what is the structure of the program, the management of the program? How many people do you need? What types of people do you need to process the claims? Are you going to maintain the existing architecture that BP set up when it paid out the \$400 million over the first four months? Or are you going to create a new system from scratch? What are the structural management responsibilities of this facility to process the claims? What does the claim form look like? Would you use electronic websites and Internet to process claims? Is it going to be electronic or is it going to be paper? All of these questions [were] very practical questions.

...So there were some structural questions that had to be dealt with along with some internal conceptual questions along with a series of external reality questions. And all of that had to be figured into the mix during the four months between the date of the spill in April and August 23rd, 2010, when the Gulf Coast claims facility began operations.

The thought process [for working through these questions] is something like the following. One, go back and see what you did before with 9/11, with Virginia Tech, with Agent Orange. How much of what you did before is replicable or transferable in type to the same questions now for BP? Two, what does the company [BP] say in requesting their input into this? They [BP] are paying for the whole thing. They already have a facility up that's paid \$400 million in the first four months. What does the company say about some of these questions? Three, what does the Department of Justice say? They are the point man for the Administration, which signed the escrow agreement. What is the input of the Administration? ...you've really got some very interested (formal interested) parties, my experience... I think the thought process develops out of that input.

Also in answering these internal substantive questions, you confront the reality of volume, speed, and efficiency. You cannot have hearings the way you did for 9/11. There are too many claims. You cannot invite people in for a hearing. You do not have that luxury. There are too many claims. So you have to work your way through it by getting that type of input...

There were very few directives. ...BP and the Administration, having agreed that I would be independent, BP could cajole or recommend or suggest or urge. It could not demand. Having said that, BP is paying the freight. And they are paying me,...you want to hear at least what BP has to say about suggestions.

...[W]hen you go to BP to talk about suggestions from BP, ...there are two overriding inputs from BP. One is input based on what they know as an oil company or what they've gleaned as an oil company. And one is... their wishful thinking, but [what] they don't understand, because they're not in the claims business. They're not in the compensation business.

So for example, BP made it very clear that, "Ken, when you do this program, we want a full release from suit. We don't want people to just release us. What good is that? If they can take our money, release us but go and sue Transocean, Transocean turns around and cross-claims against us, and we're right back in every single lawsuit. We want a total release. They cannot sue anybody." Well, that makes eminent sense to me as the claims administrator, not for the reason BP says, but if I'm making a claimant whole, their total damage is \$1,000 dollars, and they're getting the \$1,000 dollars, they shouldn't be able to sue anybody else. Now BP may have a cross-claim against Transocean for \$500 dollars of that \$1,000. But that's between BP and Transocean. We're going to make the claimant whole.

So this is a big issue for BP – a very prominent issue -- the nature and scope of the release.

Second, BP has a vested interest in how much you are paying people. They want to know, what is the methodology you are going to use to calculate damage? What are the proof requirements?

Three, BP also wants to know who is eligible. I mean, Ken, we're willing to make everybody whole who's eligible but a restaurant on Hanover Street in Boston, they don't have a claim. If they file a lawsuit, they'll get thrown out on their ear. So, you know, we want to just make sure that you're paying people what they ought to get paid, you know, because they've been harmed by the oil spill. But let's not make this open season on the world.

Next BP says, Ken, if you're going to offer people a payment, are you going to require a release? What is the nature of the release? And are you going, in return for a full release, are you going to pay them for anticipated future damage? How long will it take the Gulf to recover? ...It's one thing to say to somebody, I'll give you a thousand dollars for your past damage until we cap the well. But Ken, are you going to also give people, not only a thousand dollars, but two thousand dollars more anticipating that the fish won't be available because of the oil until two, three, four, five years hence? We want to know how you're going to find that out. Who are you going to talk to? What biologists? What scientists?

All of these issues, BP had very, very intense, serious input into design, not so much administration, but the design of the program. BP never suggested that it had any right to second guess a particular payment to a particular claimant. BP was very interested in the architecture of the program, answering some of these questions.

The Department of Justice had no interest in any of this. The Department of Justice just wanted to make sure that whatever program was set up would be politically credible, that the Administration would be perceived as being much more efficient and effective than Brownie and the Bush Administration with Katrina. So the Department of Justice's overriding interest was not in the nuts and bolts of the internal, but rather the political viability and salability of the program that's established. They knew what they didn't know.

The escrow agreement, the formal agreement between the Administration and BP made it very clear that a claims facility would be independent of BP. Now what that meant politically and to the public at large

was simply that BP would set up the facility, that a person would be selected to design and administer the facility, and that that person would have no responsibility whatsoever to either BP or the Department of Justice in the design and administration of the claims process. So when I took on this assignment, I naively thought that that meant that I was answerable to nobody, and that my credibility would permit me, without requirement, to do my own thing. I was very wrong about that.

Independence might mean different things to different people. Now as a legal matter, I was not truly independent, because I was a creature of an existing law, the Federal Oil Pollution Control Act, set up by Congress after Exxon Valdez, which required BP by law, following a spill, ...to consider the settlement of claims. So what I learned, even though I was, quote, independent, unquote, I am still standing in the shoes of BP under the existing Federal Oil Pollution Control Act... [W]hat made this very, very unique was the fact that BP had agreed with the Administration to let me do my own thing. So I was not simply processing claims for BP under the Oil Pollution Control Act. But I stood in the shoes of BP in terms of that statute. So even though I am independent, I am still subject to the strictures of OPA, requiring everybody to come to me instead of BP and BP agreeing, Feinberg stands in our shoes for purposes of the OPA statute.

So my independence was automatically, at least existentially circumscribed by the knowledge that BP, to have to settle these claims, try and settle them, or ask somebody else to settle them for it. Second, my independence was also circumscribed perception-wise by the fact that BP was paying me. This was not a pro bono undertaking. I had a contract with BP that BP would pay the entire cost of the full facility, not just my law firm, but my claims adjustors, my accountants, my lawyers, my damage calculators. I had, when I took over 3,500 people working for me, and all of them were being paid monthly by BP. So again, how independent is the perception if I am, and the entire program is, being funded by BP? Third, although I could announce my independence and say I am truly independent and BP is not second guessing, the judge overseeing the litigation involving the Federal Oil Pollution Control Act issued a ruling, a formal order saying, Mr. Feinberg, stop saying that you are independent for all purposes. It's very misleading. You stand in the shoes of BP under OPA. You are being paid by BP. Do not keep announcing to the world that you have no obligations to BP. You are a hybrid. I agree with you, and I will say in this order of the court, you are independent when it comes to the processing of any individual claim. No one can second guess you on whether someone is eligible and how much they should get. That is your call, not BP's. You are independent. But stop telling people that you are independent for all purposes... And the judge issued that ruling. So there are three or four different challenges to the notion that I was truly 100% independent.

I viewed my role as being totally independent when it came to how much should this person get, how much should that business get, should that claimant be deemed eligible. I viewed myself as making independent decisions that would not be subject to any formal check or balance from anybody else. The design of the program, I felt required input from both BP and the Administration. But when the design was over and we were up and running, I gave very little credence to either BP or, DOJ had no interest in any individual claim. But I gave very little interest to BP's, how BP would have decided it had they been in charge. There was definitely, as a practical matter, a gap to this day between design decisions that I'm making and administrative, individual claim-by-claim decisions that I'm making. On design, I was

independent, but very much was cognizant of the fact that BP would want some very prominent input, which I gave them. But at the end of the day, was still my call and they acknowledged that...

There is no pressure more important than getting money out the door. That is the cardinal objective, the primary objective in any compensation program, is talk is cheap. Are checks flowing? So there was a tremendous tension between the need to get money out the door and the need to do it in a principled, consistent, and transparent way. And unlike 9/11, where the volume of claims and the nature of the calculation, a death claim or a physical injury claim made that objective easier to implement, in BP, the volume of people clamoring for money now, coupled with the need to do an individual by individual calculation of damage, coupled with the need to have eligibility and methodology, proof requirements created a tremendous tension between getting money out fast and the conceptual architecture of the program. Couple that with the reality, which was BP clamoring for a full release. Well, if you want a full release in return for payment, how are you going to give somebody, how are you going to require a full release when you're trying to get emergency money out the door for people's livelihood before you'd even had a chance to really think about the long-term impact of the spill in the Gulf? So you run up this horrible, you run up to this challenging tension between, get the money out, column one, versus column two, do it in a principled way, versus column three, get the money out fast in a principled way, but what about the fact that you don't even know yet? Your biologists and your environmentalists and your economists haven't even told you yet what the long-term implications are for the Gulf of the spill. So you better come up with a very creative, conceptual way in design to bridge these tensions. We did.

AHLERS: And how did you come up with that?

FEINBERG: What we said. All right, we've got these constituents. We've got, get the money out fast, but do it in a principled way. We don't yet know about the future of the Gulf. Here's what we will do. For 90 days, for August 23rd through November 22nd, 2010, for 90 days, we will give anybody who applies and is eligible an emergency payment, no release, free money, found money. C'mon in. We will give you, we'll calculate your damages, we may be off. We may make a mistake. But if we make a mistake, it's not going to inure really to your detriment because we don't want anything in return. We're going to have a 90-day window of no obligation emergency payments. That way you get money out the door. We still have a methodology and criteria, but claimant, you're not going to have to sign anything. You can take the money, hire a lawyer, and sue if you want. But that's what we're going to do. Now, here's one of the most, I think one of the most sophisticated aspects of the program, which is absolutely fascinating based on my experience. We designed this emergency program, a no obligation payment designed to deal with the three columns that are intention. BP howls. They howl. Ken, you're giving \$20 billion, you're giving [us?] a portion of the \$20 billion, about two and a half billion dollars it came to, you're giving people two and a half billion dollars in 90 days with no release. What are you thinking? What are you thinking? All you're doing is funding litigation. Now, I said to BP, you guys don't get it. You're an oil company. I'm telling you, these people that are taking this money, they'll be back. They'll be back, I'm telling you. You've got to know the mindset of people, that once they realize they can get money without litigating, they'll take this money, this emergency money, but you'll get your release. They'll come back for supplemental payment for damage that isn't compensated yet. And when they want that money, they're going to have to sign a release. Trust me. BP had no choice, as I say. They could cajole and implore and

request, but they couldn't demand. They couldn't, I don't believe they would have gone along with the emergency program if they had a veto power. But they didn't. I rejected their criticism and overrode their concerns and was entirely vindicated by what happened afterward. So for 90 days, we gave out two and a half billion to about 80,000 people, no release. And virtually all of them came back and signed a release for subsequent payment, as I knew they would.

AHLERS: I would imagine the Administration, on the other hand, loved that.

FEINBERG: Loved it. Loved it. The Administration loved anything that gave them political cover or allowed them to contrast government performance with the Katrina debacle. So the Administration only cared about the bottom line, which was, well, you must be doing something right, because people are taking the money. They cannot credibly accuse the Administration of being Katrina-like. So we're satisfied. We frankly don't want to get into any of the nuts and bolts the way BP does, because it's BP's money.

AHLERS: You have done this so many times before and have such credibility, but do you think that, if you did not have that credibility that this would have gone through?

FEINBERG: BP had no choice, you see. Once BP agreed to \$20 billion and a handshake with an escrow agreement, promising for independence for the administrator, BP was stuck. BP was stuck. BP gambled that this claims facility would corral claims, get them out of an Exxon Valdez situation, permit them to be a good corporate citizen, so they could continue to drill in the Gulf. And BP made a decision that it didn't want to go down the protracted litigation route. Once they made that decision upfront, with the \$20 billion dollar guarantee, publicly on every newspaper in the country, they could cajole and implore, but they constantly, consistently, every day reiterated to me personally, here's what they think. But it's my call. This is a great example, I must say, of unique corporate boldness and creativity. That's one reason why it's really not much of a precedent. I can't see many companies, I can't see any company putting up \$20 billion dollars without first being required to do so by the legal system.

AHLERS: Do you think that it paid off for them?

FEINBERG: Oh my goodness, yes. It paid off in the following couple of ways. In 16 months, I paid out only, in quotes, six and a half of the \$20 billion. I don't think there's more than \$500 million left. In other words, for about \$7 billion, they will have corralled about 250,000 to 275,000 releases. Second, as a result of the Gulf Coast Claims Facility, the first trial in the case isn't scheduled until February 27th, next month, on liability, the issue of [viewing?] who's liable for the spill. By that time, or shortly thereafter, I think the whole litigation in New Orleans will settle. The litigation will be gone. There will be no litigation. The lawyers will resolve all of the remaining claims. When they resolve those claims, the benchmark as to value isn't guesswork. Here's what the Gulf Coast Claims Facility has paid, and they've got the releases. So, I mean, there it is for you to look at. And that's what it's going to cost. So I think that, and BP has said this. Now, they may be self-serving when they say it to me. But they've said that what happened here was a homerun for them. They didn't need \$20 billion; they only needed \$7. And for \$7 billion, they got out of the litigation. There'll be a settlement involving, not only them, but Transocean, Halliburton, and

Anadarko. They'll probably end up, the whole thing will probably cost BP who knows what, a billion dollars, not \$7. They'll get reimbursed. So I think it's a classic example of bold corporate leadership leading to the right result. But, you know, it's easy for me to say since I'm running the program. But the statistics speak for themselves.

AHLERS: How do you design the program? How do you design the methodology? How do you define the damages and the formula used?

FEINBERG: ...You start off with the reality. What does the law require? What does the law require as to eligibility, proximate cause under the law of torts? What does the law, the Federal Oil Pollution Control Act, what does the law say about eligibility? What does the law say about methodology of damages? What does the law say about proof? What does the law say about releases? And you use as your starting point what you believe is the basic legal obligation of BP, under Oil Pollution Control Act, to compensate. Then you say, how can I make the program even more generous in order to, a), satisfy the Administration, that's all they care about is political praise, to satisfy the Administration, a), and b), to encourage people to come into the program and sign a release? Otherwise, the lawyers who are dead set against this for the most part, the lawyers are saying, no, no, you can go to court and you'll have to wait longer, but you'll get a pot of gold. How can I set up a contrasting system, not deliberately alienating the lawyers, but telling the Administration and BP, here's what I'm doing? Administration, you're satisfied because I'm being more generous than the law requires. BP, don't gulp. At the end of the day, you [won?] 250,000 releases. So it's in your interest to encourage people to join the fund. Now, it's not that simple because the Administration says, well, everything, the devil's in the details. What constitutes more generosity, you know? We're going to get whacked by members of Congress in the Gulf saying, you're being too restrictive. So the devil's in the details. We like your idea in theory, but we want to see in practice how it works. BP says, on the other hand, you know, you're saying you're going to corral the claims. Well, we don't see them yet. You know? We're buying a pig in a poke. And even if you corral the claims, at some point, Ken, you're corralling claims that in law wouldn't see the light of day. So, I mean, you're not really saving us. [We're costing you?] money, but, I mean, a lot of these claims that you're going to pay, if they're more generous than the law requires, I mean, it's a self-defeating [prophecy?]. You're giving away good money to claimants that wouldn't have a chance in court. So there's tension there. I mean, that's the theory. Then what you do, you master what the law requires and say to yourself, all right, I'll do even better. On eligibility, maybe a restaurant in New Orleans isn't eligible. We'll make them eligible. On methodology, economic laws, we will develop models that make it much easier for a claimant to say, before the spill, we were making this, after the spill, we were making that, pay us. That's all, very simple, before and after. That's not the law. The law says, well, before the spill, you were making this and after the spill, you were making that. But after that, there might be a lot of reasons why you weren't doing as well. Show us with specificity of evidence how it's attributable to the spill as opposed to bad management of your company. Whereas if Feinberg's going to simply create presumptions, before the spill, this, we'll presume after the spill, that, we'll presume it's because of the spill. So the methodology will be much more liberal. Proof, well, you know, what are we going to require for proof, especially during the emergency period when people need money right away and may not have tax returns and may not have books and records or whatever? What will we accept in the way of proof to

show that it's due to the spill, this is their damages? That's the way we went about developing the methodologies.

AHLERS: And with the eligibility criteria, one of the issues would seem to be how far out do you draw the circle?

FEINBERG: Direct versus indirect. We use physical proximity primarily. The closer you are to the spill, the less specificity the damage requirements. So if you owned a marina in Pensacola, presumptions in this facility ease the burden of getting paid by being proven eligible. Before the spill, Mr. Feinberg, I made \$100,000 a month. After the spill, I made \$50,000 a month. Here, look. Now I can't tell you that was due to the spill. Maybe it's due to bad weather that boats aren't coming in here. Do you care? No. I don't care. The closer you are to the spill, the easier it is for the Gulf Coast Claims Facility to apply presumptions which will find you eligible and will calculate your damage. The further out you are from the spill, Mr. Feinberg, I own a hotel 20 miles from the spill, the more the requirement that we will not accept a simple presumption. Give us evidentiary documentation. Show us the cancellations due to the spill before we'll pay. That's in a nutshell, I think, how the system worked. Now not entirely, there was also vertical integration. Mr. Feinberg, I'm a shrimper right on the beach. I shrimp. Before the spill, I made \$20,000 a month, after the spill, \$10,000 a month. Would you presume \$10,000 dollars worth of shrimp damage because I couldn't shrimp? Yes, I will. Now Mr. Feinberg, I own a shrimp processing plant 20 miles from the beach. All I process is Gulf shrimp. Will you give me the presumption? Yes, we will. We'll vertically integrate the shrimping up the chain, as you say, Doug. Up the chain. Since all you're doing is processing Gulf shrimp, you might as well be on the beach. You may be in Knoxville, Tennessee, but you've demonstrated that's all you do; we'll give you the same benefit of the presumptions.

AHLERS: And how far up the chain do you go?

FEINBERG: ...Conceptually, we'll stop at the processor. In other words, in my hypothetical, we'll give a presumption to the shrimper and we'll give a presumption to the Knoxville, Tennessee shrimp processing company that processes Gulf shrimp. We will not go any further. We're already way beyond the law. We won't pay the Boston, Mass Box Company that provides boxes to the shrimp processor in Knoxville, Tennessee to store the shrimp. We'll stop with the shrimp processor in terms of vertical integration. But in terms of vertical integration, as long as you're in the direct food chain, we'll do it. And in terms of horizontal eligibility, as long as your hotel or your restaurant is right on the Gulf, we'll give you a presumption. The minute you go inland, you're going to have to have the greatest specificity of proof. And we'll put it all on the website, transparent so people can read. You ought to go to the GCCF website. You'll see all these rules.

AHLERS: Maybe you can step through the week, two weeks, three weeks, however long it took for actually coming up with the rules of the program – just describe the process.

FEINBERG: The process was, you get around a conference table and you have your checklist of concepts, eligibility, methodology, documentation, claim form, etc. And you've got your claims adjustors, your claims processors, your damage calculation experts, and your accountants. Don't need lawyers for this,

not many at least, and your lawyer. Your lawyer. And you sit around a table and you design something. Then you send that draft after a week or whatever to BP. What do you think? And you send it to the Department of Justice, which in turn sends that draft to all constituents interested in it, different agencies, Homeland Security, the Coast Guard, whatever agency, Department of the Treasury, whatever agency might be interested in it, and Department of Justice or me. We send it to other constituents in the field; state attorneys general have a real interest in this. Governance of the Gulf states have an interest in this, and provide something like a 30- to 45-day comment period on various drafts until you feel that it's time to announce a final rule.

AHLERS: In the methodology for damages, there are the damages that had happened to-date – damages that claimants can show, but there are also the projected future damages. How does the methodology handle compensating for future damages?

FEINBERG: Oh, this is a very, very big issue, you see. There's two ways you deal with future damage. Ignore it, very important. That's a very valid, viable option. Ignore the future. Say that the future doesn't enter into your methodology, versus, we'll get the biological, the marine, the environmental, and the economists to opine on the long-term impact of the spill on the Gulf, and then we'll factor that expert opinion into a damages methodology. Well, that's exactly what we did, you see. We developed three options, really a fourth, but three conceptual options. One, as already explained here, for 90 days is your emergency payment, no obligation, just take it for past damage. You're in an emergency situation, as you say Doug, your livelihood depends on it. And you've documented your damage right after that spill and the fishing grounds are closed and tourism isn't coming to the Gulf, and here's a check. No obligation. Option one. Option two, you're risk averse. You received an emergency payment, now you don't know about the future. You don't trust what the GCCF is saying about the future. The GCCF methodologies for future payment, although are purportedly grounded in expert opinion, you don't buy it. I don't buy it. I'm risk averse. I don't know how long the Gulf is going to remain problematic. So I will take an interim payment, option two. The emergency payment is option one. That's not an option. [You can get that?] [UNINTELLIGIBLE] now you're option for two or three. Option two, an interim payment, I will document my past quarterly damage since the emergency payment. That's all I want. Just pay me. No release. I can keep coming back every quarter. I can still sue. No obligation on my part under OPA other than to take a past ongoing quarterly damage amount. And I will continue to return without giving you a release until I'm comfortable about the future. Option three, now I'm not risk averse. I want to close this out and move on. And your experts, your independent experts who tell us and tell you that the Gulf should return to normal by the end of 2013, that's good enough for me. Basically, you're giving me two times. You're giving me 2011 damage, but you'll also add to that 2012 and 2013 damage. In other words, 2010 damages times, I'm sorry, I'm sorry, that the future, the Gulf will return to normal by the end of 2012, by the end of 2012, not 2013, by the end of 2012. OK. I'm not risk averse. Give me my 2010 amount times two for '11 and '12. I'm gone. File payment. Yes, I'll sign a release. I'll never come back. That's it. All those options are available. [I knew?], as you guys would predict, that the great, great bulk of people took the final payment, signed a release, and were gone.

AHLERS: I am fascinated by intersection where science meets policy and finding the experts to make that decision. Ultimately, you had to have some number or some date for where the damage would end – a

point in time at which you draw the cutoff line. This has to be based on some assessment of both the economic damages (tourism, etc.) as well as the marine biology damages. And it was at a time when there was a firestorm of differing viewpoints -- some of them by experts, but also the media and the hype.

FEINBERG: That's right. But it's a firestorm where I have no axe to grind. This is not an adversarial process. So although it's a firestorm, I'm going to just go and get the very best people that all the literature say are the experts. So we went to professor [Ken?] Tunnell at Texas A&M, the nation's foremost marine biologist at a special school at Texas A&M, professor Tunnell, tell me, when will the shrimp be safe? When will the fish be safe? When will the oysters be safe? He gave us a report, relied on the report. We hired one of the foremost econometric firms in the country and we asked the ARPC. We said, guys, Tom Vasquez, the head of it, we want your absolute independent view on when the economy on the Gulf will no longer be impacted by the spill. They gave us their expert opinion. We put all of these opinions up on the Web and in the claims offices and said to everybody, here's what the experts are telling us. Now, we'll give you all 30 days to comment. And you can comment anecdotally if you want or comment officially or based on data, or whatever. But here's what we're going to do. Thirty days later, we had maybe a thousand people came in and said Tunnell and ARPC were being much too restrictive. It was much worse than what they said. And you had BP coming in officially saying that Tunnell and ARPC are being much more generous than they ought to be, that the Gulf is returning to normal in rapid fashion. And it's ridiculous to be giving people 'til 2012 for future loss, when the Gulf will be fine by the end of 2010, by the end of 2011. They've given them an extra whole year that's unjustifiable. Well, when we added up those two columns and we saw that we must be doing something right. No one's happy. And we announced it after a 30-day comment period. We went with it, plugged that into our methodology.

AHLERS: Did you feel any pressure in that process?

FEINBERG: Feel pressure, I'll say, all sorts of pressure, constant criticism from the politicians in the Gulf that we're being, we're simply an arm of BP and we're simply catering to BP's whim, constant criticism during this period from BP saying, Jesus, you guys are really just capitulating to the politicians. There's no evidence of any of this [SOUND OFF/THEN ON] we're insulated from that type of credible criticism by the fact we didn't make it up.

AHLERS: So one question you had to decide was how long to keep the claims facility up and running.

FEINBERG: Easy. By agreement between DOJ and BP, August, 2013. By that time, the view was that the facility will have had an opportunity to pay all claims. And if claims were continuing to come in after August of 2013, there'd be, just, you'd go to court unless BP and the Administration agree to extend the life of the program, something that I very much [countenance?] against. People weren't without a remedy after 2013, they could go sue.

AHLERS: Which was an option throughout the whole process.

FEINBERG: Oh, throughout the whole thing. Throughout the whole thing.

AHLERS: Could you talk some more about the issue of fraud and abuse and how one builds things into the program or weighs that into the calculations as to how important that is, versus how important it is to get money out or to be fair and equitable, etc.

FEINBERG: Fraud is a big problem. Fraud undercuts the credibility of the program. And if you don't deal with fraud upfront very visibly, you run the risk, first, of the program being, everybody believing that they ought to just apply and get money because you're paying people who are criminals. And if you're paying those people, certainly you're going to pay me. I'm not a criminal, and yet you're denying me my payment, so. It's very important, nothing can undercut the credibility of a program like this more than fraud. You address it by first having an anti-fraud, internal anti-fraud unit. We hired Guidepost, a nationally respected firm, anti-fraud firm as part of our team. And you then make sure that you coordinate very closely with the Department of Justice, which after all, was an escrow agreement signatory here. And the fraud division of justice is very active in pursuing anonymous tips, a 1-800 number, and working with us. Fraud in relative terms, wasn't a problem. We'd received about 1,200,000 claims. And I think the number of allegedly skeptical claims is about 15,000 out of 1,200,000. Guidepost having reviewed those has so far sent, as what we think is fraud, criminal fraud, we've sent about 3,000 to the Department of Justice for prosecution. And they've been investigating, prosecuting some, I don't know, maybe a hundred so far, but sending a signal of deterrence to those who would commit fraud. It's a fascinating issue, you see. It's one thing to commit out and out criminal fraud, doctoring tax returns, submitting fraudulent books and records. That's criminal. You're using the mails to commit fraud. It's terrible. It's another thing to scam the system. That's not fraud. Look, you know, I don't have any books and records about what the hell I'm going to apply and I'll say that I lost \$100,000 when I really only lost \$7,000. So what. You know? Everybody does it. That's not fraud. So there's a big gap. There's a big distinction between attempting wishful scamming of the system and a Federal offense that can send you to Leavenworth. That's much more serious.

AHLERS: How do you handle the exceptions or the things that do not easily fall within the buckets of the system as designed?

FEINBERG: You have to look at each one. And instead of treating it like a bucket, as a part of the bucket, it might be that it's a ladle or a spoon that has to be akin to the bucket, doesn't really fit into the bucket. And we'll take a look at that as a one-off. Now the trouble with one-offs is just as you would surmise, you experts up in Cambridge. The trouble with one-offs, it may promote some degree of absolute justice by considering a one-off, a ladle, not a bucket. Trouble is, it takes time. It slows down efficiency and speed, and that's the price you pay for not assuming that the bucket will cover it. And that's a problem.

AHLERS: All of these things are great on paper, one actually has to, at the end of the day, run an efficient system that actually gets checks out into people's hands in a reasonable timeframe. And that issue of the trade-off between time, especially when you are working at such a high volume, if you actually did exception processing or one-offs on every one, or even if you did it on 20% of the cases, it delays the entire process. So I am interested in your viewpoint on that trade-off between what would be the ultimate

fair system, but also may mean penalizing everyone else because they are not getting their money, which might put them out of business.

FEINBERG: That's right. Now it's not quite that stark. It's not, being ultimately fair to everybody means you'll put people out of business. What really happens is, by being ultimately fair to everybody, you can't allow the aberration to drive the system. The way that translates is this. In 9/11, with only 7,300 claims in total, over 33 months, you could give everybody procedural due process, you see. You could give everybody the option of a hearing if they wanted a hearing, a formal hearing. Half the people took it. It made the 9/11 fund a tremendous success, the opportunity to be heard, what I call the internal procedural due process issue. With BP, you couldn't do it. A million claims, you can't do it. We get 7,300 in one day. So it couldn't be done. So right away, you're sacrificing the one-off opportunity to be heard by the reality that there's so many claims, you can't give people that option. Now that doesn't mean that internally you're not going to deal with the ladle that's not part of the bucket. But that ladle person can't slow down the bucket. So the price the ladle person pays for being an aberration is, we'll park that person over here and we'll get to him or her when we can. But we can't slow down the bucket processing. And nobody's getting a hearing, because there's just too many claims. That's the price you pay, and it's a heavy price, I might add.

AHLERS: It also strikes me that this is a fairly unique situation where the diversity of damages really complicates things.

FEINBERG: The diversity of damages, there's three things that makes it a very unique case, the diversity of damages, one, the intensity required to calculate each claim. If you're in a bucket that doesn't mean that we have to, we still have to take each of the fish out of the bucket and look at the fish. So you may be in a system which is rote, but we've still got to make sure you're eligible and that you've got the documentation. So the second problem is not only, problem number one, diversity of damage, but two, claim by claim evaluation of that damage. Three, sheer volume. It's not just the diversity of the individual claims, it's the aggregate of the claims which is overwhelming. Overwhelming. And that really, all three of those together, pose an almost insurmountable challenge to efficiency and speed.

...and [there is] the aspirational objective of a claimant. They are not lying. They believe it. Human nature, being what it is, "Mr. Feinberg, not only do I need my money in order to stay in business, ...but look at my claim. It's unique. My expectation is such that you should give me six times what you're really giving me because you don't get it. I know that I need money. I need it now. And it's all due to the spill, and pay me." It's this external problem of expectation which looms extremely large in all of this.

AHLERS: The perceptions and public communication obviously play such a role in this. How did you manage the perceptions and public communications throughout the process?

FEINBERG: You try. The perceptions are a huge obstacle. You call it perceptions. I call it expectation. When BP announces, here's \$20 billion, build it and they will come. And when BP announces \$20 billion, and then supplements it with full-page ads for weeks saying, we will make you whole, we're here to stay in the Gulf, you see, everybody files a claim expecting that there's \$20 billion, pay me. And the perception

is, whatever BP did the first four months, paying \$400 million, that's peanuts. There's \$20 billion. Feinberg is independent. He'll give us whatever we want no matter what the eligibility, no matter how much. It poses a huge dilemma where expectation, perception is a ready trough of money for anybody who applies, for any reason, versus the reality that we've talked about for the last hour and a half, here's what we can pay and here's what we can't. That expectation can only be overcome, that tension between expectation and reality can only be overcome one way, which you mentioned earlier. Get the money out, get it out fast. So your expectation is wrong. But don't blame the Gulf Coast Claims Facility. It's paying everybody else their expectation. You don't understand why your perception isn't being fulfilled. Well, the reality is, we can't fulfill it. But meanwhile, we've paid two and a half billion in 90 days to 180,000 people. Somebody's getting paid.

AHLERS: And in terms of public communication, you crisscrossed the Gulf...

FEINBERG: That's the other thing. You can't hide. Now, it's very interesting, these town hall meetings, crisscrossing the Gulf. You take an enormous amount of collective public criticism. People get up at these town hall meetings and fan the flames and reinforce the irrationality by getting everybody else to clap in the audience. So they're front and center. Then people say to you, why are you going down there for this abuse? Because after it's over, individually people come over to you and say, Mr. Feinberg, you certainly have balls to do this. I'll tell you. You know? We thank you for coming, and, you could have hid in Washington. And instead, you're the very public face of the program. You're on local TV. You're on national TV. You're taking hits and you're not objecting. And so you just do that. That's part of the strategy. Part of the leadership strategy of the administrator is to weigh in, take your hits, show that you're not hiding, and respond to the politicians who are bullies by taking them on, which I've done.

...I'll give you examples that are in my book. I'll give you the example of the politicians who are perfect examples of how public communication offsets political criticism. Senator David Vitter, Republican of Louisiana, Congressman Jo Bonner, Republican of Alabama, and as a third example of the other side of it, Republican Governor of Mississippi, Haley Barbour. You could cite those three and see how I dealt with the bullies, Vitter and Bonner, by responding publicly to their criticism and taking them on, until they stopped criticizing me. Haley Barbour, on the other hand, was the dove. He testified in Congress that, leave Feinberg alone. They're trying to do the right thing and they're doing a pretty good job of it.

And I can give you half a dozen or a dozen examples of both the criticism and how we responded to deflect the criticism.

...You know, it's fascinating. Vitter or somebody writes me a letter and says, we think that the Gulf Coast Claims Facility, how much, what percentage, you keep saying how you've spent billions. Feinberg, what percentage of that requested from claimants have you paid? Because we think that will show in stark terms that you're only paying five or six cents on the dollar of that requested by claimants, and that therefore, your proof requirements are too restrictive. [Send me?] a letter like that. Jerks. So I write back and then go public. You know, we've only paid eleven cents of every dollar requested. But it's meaningless, Congressman, Senator. That's a meaningless number. You don't understand human nature. When people apply, they ask for the world. My eleven cents of every dollar includes one claimant who

requested informally, in the claim form, all \$20 billion. A second claimant requested \$11 billion. Now if you add up all of the money requested, just two claimants asked for \$31 billion. We'll keep doing this and you'll find that it's meaningless. People can ask for whatever they want. The question is, what can they document and show? That was the end. Never heard another word from them on that subject.

WEEKS: What about the state attorneys general? Because I know they put out a lot of letters and statements about how the process was working. Did you find them helpful overall?

FEINBERG: No. All the state attorneys general representing all elected, representing their local constituents, were very hard on me. They didn't see eye to eye on some things. The attorney general of Louisiana, Buddy Caldwell, quiet, didn't complain. People in Louisiana are being fairly treated. I see no reason to get involved. The attorney general of Florida, you're not paying enough to hotels and restaurants. The attorney general of Alabama, just recently elected, Luther Strange, very critical. You're not doing a good job. And the worst by far public enemy number one for me was, and continues to be, Jim Hood of Mississippi, who's demanded and is now receiving an independent audit of the Gulf Coast Claims Facility, which will vindicate the facility and that'll end his argument. So, I mean, the AGs have been local politicians who have been quite critical. But in recent months, my best weapon of course is the calendar. And as month after month goes by and BP fades into memory as a historical environmental tragedy, and as the Gulf comes back and the people are vacationing and the shrimpers shrimping and the fish are fishing, it's moving forward, less and less criticism.

AHLERS: So what other challenges did you run into on the structural side, on the setting up and administering, and running a massive \$7 billion program?

FEINBERG: Well, you run into, I mean, again, you have a menu of challenges, no one of which rises quite to the level of what we've talked about the last couple of hours. But for example, BP on the external side, BP constantly saying, geez Ken, when are you going to shut down these 35 claims offices? There's no volume anymore. You've basically cultivated the claims. So why not save infrastructure costs by shutting down 35 claims offices and leaving one in each state? Well, on the merits, that makes a lot of sense 'til the politicians say that you're going to shut down three or four claims offices in Alabama or Mississippi. And then they start, you know [UNINTELLIGIBLE] a freebie. Let's go after Feinberg. He's making it tougher on our constituents. You can draft two columns, one on the merits, steps that should be taken that will improve the efficiency, fairness, and reasonableness of the GCCF, column two, political realities, Closing claims offices is a free opportunity for politicians to defend their constituents and their constituent service. So that's just one example. We've reduced 35. I think we're down to about eight. But that's an example of external political realities running up against the merits. Secondly, it really doesn't matter how much expertise you secure in saying that, you know, we'll give you, by the end of 2012, things will be back to normal. You're always going to get criticism for local constituents. Well, that means I'm getting two times instead of four times or six times or eight times my 2010 damage. That's not enough. And [you're being, you're in the tank?] for BP, so. That's an issue. But you run into all of these problems as you move forward.

AHLERS: I am interested also if you found any operational problems.

FEINBERG: Well, I've given you some of the operational. Volume automatically poses unprecedented operational problems. I don't know of any private claims facility in the history of the country that have processed over a million claims. And the operational challenges begin at the local level where there's claims intake by employees who it took months to get them to be team players, you see. That's a huge operational challenge. Then there are other operational challenges. When you have over a million claims, there's bound to be some inconsistency and some disparity in treating similar people. When we discover that inconsistency, we'll true up the claim and provide a supplemental check. But there's bound to be, with over a million claims, you're going to get some of that inconsistency. It's inevitable.

AHLERS: Are there any times where you second guessed yourself?

FEINBERG: All the time. I gave you a couple today. I think it was a mistake to keep the company that was in place when we took over. We should have started from scratch. I think I oversold the program. I think at the outset when I went down into the town hall meetings... and said, file, file, we'll process your claim right away. I was thinking 9/11, I should have realized the volume of claims would slow the process down, people wouldn't get paid as quickly as they thought they would. I think that I could have done a better job at trying to communicate with the lawyers. Instead, I did not do as good a job as I could have in trying to bring the lawyers, at least neutralize them instead of having them so antagonistic, in the program. Those are some obvious ones... And yet, I think by all accounts, the program's been pretty of a success.

...I've found in all of these programs... you can talk back and forth and argue about whether a program works or not. But once you've got six and a half billion dollars out the door before there's been a trial, you're on the high ground. That's one thing. That's one thing, money going out the door. And the other weapon that I have is the calendar, you see. Every day that goes by, BP is historical. I mean, people have moved on already. Even in the Gulf, people have moved on. The calendar is a tremendous weapon of mine in getting this talk off the front page so we can just deliver the goods. And I think that the calendar always, like in 9/11, really works to my benefit. I was over at the White House last month and the First Lady, I saw the First Lady. And I said to the First Lady, I am Ken Feinberg. I'm doing the BP oil spill. She goes, are you still doing that? I go, I'm doing it and we're getting the claims out. She goes, Mr. Feinberg, all I can tell you is, this isn't even on the President's radar screen, which tells you something about your success in getting one less problem they have to focus on. So I think that's good.