



Grief and Loss

Identifying and Proving Damages in Wrongful Death Cases

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Review by
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Benjamin Franklin reportedly came up with the old bromide that there are only two guarantees in life: death and taxes—both of which cause us all significant grief and sorrow. While not to trivialize the dismay one experiences when paying taxes, this pales in comparison to the consternation, grief and sorrow one feels at the loss of a loved one; especially if that loved one died suddenly, unexpectedly and untimely due to the negligence of another. This book focuses on understanding the psychology behind grieving so we can not only be more sympathetic towards individuals whom have experienced this type of loss but also so we can better understand the grieving process in order to enhance our representation of survivors in wrongful death matters.

We all know that people grieve in different ways. Furthermore, we all know that there is no “right way” to grieve. These themes permeate the book. The authors want us to understand, however, that “[w]hen we agree to represent a grieving family, [we] become a part of the grieving process.” Consequently, it is imperative that we understand the grieving process in order to adequately perform our job. According to the authors, while this book is not a “traditional ‘how to’ book” it will assist us with our handling of wrongful death cases from intake to resolution:

[The book] describes new categories of non-economic death losses, new ways to identify and prove all elements of a survivor’s death loss, as well as new ways of thinking about and discussing these losses with our clients and our juries. It also suggests that by becoming more sensitive to the nature, intensity, and duration of these losses, we can contribute to our clients’ mental health. Bereavement and grief reactions can become chronic and disabling. Clinical depression and

death may result. Immersed in their bereavement reactions, we are uniquely positioned to get our clients the help they need.

The authors believe that we, as trial lawyers, can ameliorate our clients’ suffering by offering therapeutic jurisprudence, being aware of our clients’ emotional needs and by learning to use the language of grieving. The assistance of a qualified grief therapist during our representation may also be a key ingredient in not only helping to ameliorate the client’s suffering but also in helping the jury to understand the “eccentricities” of the grieving process.

With respect to the customary language of grieving, the authors suggest that we avoid platitudes like “I know what you must be going through,” or, “she has gone to a better place,” or, “he is at peace in the comfort of a loving God.” While our intentions behind such sayings are good, everyone knows where that road leads. Furthermore, all these sayings do is bring pain and anger which may inevitably interfere with the attorney/client relationship. According to the authors, our job is to “listen, simply listen with an attentive ear, an open mind, and a concerned manner.”

Before examining the relationship of the deceased to the survivor and how that might impact the grieving process, the authors address myths, dimensions and tasks of grief and how those factors differ in situations involving wrongful death. This is because “[w]hen a death is sudden, unexpected, traumatic, preventable, and caused by a human wrongdoer, the intensity, duration, and processing of the grief is unique.” It is unique because the survivors usually feel as though they were not afforded an opportunity to prepare for the death; or to reverse the decedent’s fate; or to rescue the decedent. Furthermore, because of the sudden death, the survivors were not given an opportunity to repair any “rift” or temporary “schism” that the

relationship had been experiencing at the time of the loss. This may cause the survivor to feel tremendous guilt and/or a deep sense of responsibility and/or a feeling of powerlessness—emotions that may be absent in a natural death setting.

The authors also surmise that with the growth of the communications industry and the advent of the Internet, coverage of death and dying—whether due to natural disasters or events like 9/11, Columbine and Virginia Tech—may have diminished the value of any given death. This makes it even more important for us to understand the grieving process and the relationship between the deceased and the survivor so we can adequately convey that relationship and resulting loss to a jury; a jury that may have become “desensitized” to death and the feelings of loss it brings to surviving family members.

The book does a comprehensive job of examining the differences regarding the death of a spouse, versus the death of a parent, versus the death of a child, versus the death of a sibling and how each type of death has a different psychological impact on the surviving spouse, parent, child and/or sibling. While the book does a marvelous job in this regard, my only criticism is that it is somewhat repetitive and contains themes and suggestions that may be obvious to the more “seasoned” trial attorneys. Nevertheless, I do think it will not only make me more proficient in handling clients who have experienced a loss due to the negligence of another but better able to counsel those friends and family members who will inevitably, according to Benjamin Franklin, endure future loss. To that end, I believe that this book is a terrific resource to have on my shelf.