

that. But the greatest news of all is that he will rebuild the factory.

The man has a biblical approach to the complexities of late-20th-century economics, capsulated by a Jewish precept:

"When all is moral chaos, this is the time for you to be a mensch."

In Yiddish, a mensch is someone who does the right thing. The Aaron Feuerstein thing. The chaos was not moral but physical in the conflagration that began with an explosion and soon engulfed the four-building Malden Mills complex in Methuen, injuring two dozen workers, a half-dozen firemen and threatening nearby houses along the Merrimack River site.

The destruction was near-absolute. It is still inexplicable how no one perished in a fast-moving firestorm that lit up the sky. This was one of New England's handful of manufacturing success stories, a plant that emerged from bankruptcy 14 years ago. The company manufactures a trademark fabric, Polartec fleece, used extensively in outdoor clothing and sportswear by outfits such as L. L. Bean and Patagonia.

The company was founded by Feuerstein's grandfather in 1907, and its history over the century has traced the rise, fall and rise again of textile manufacturing in New England mill towns.

Most of the textile makers fled south, leaving hundreds of red brick mausoleums lining the rocky riverbeds that provided the water-power to turn lathes and looms before electricity came in. The unions that wrested higher wages from flinty Yankee employers were left behind by the companies that went to the Carolinas and elsewhere, to be closer to cotton and farther from unions.

The Feuerstein family stuck it out while many others left, taking their jobs and their profits with them. The current boss is one textile magnate who wins high praise from the union officials who deal with him.

"He's a man of his word," says Paul Coorey, president of Local 311 of the Union of Needleworkers, Industrial and Textile Employees. "He's extremely compassionate for people." The union's New England chief, Ronald Alman, said: "He believes in the process of collective bargaining and he believes that if you pay people a fair amount of money, and give them good benefits to take care of their families, they will produce for you."

If there is an award somewhere for a Compassionate Capitalist, this man should qualify, hands-down. Because he is standing up for decent jobs for working people at a time when the vast bulk of America's employer class is chopping, slimming, hollowing-out the payroll.

Job loss is the story of America at the end of the century. Wall Street is going like gangbusters, but out on the prairie, and in the old mill towns, and in smalltown America, the story is not of how big your broker's bonus is this Christmas but of how hard it is to keep working.

The day after the fire, Bank of Boston announced it will buy BayBanks, a mega-merger of financial titans that will result in the elimination of 2,000 jobs. Polaroid, another big New England employer, announced it would pare its payroll by up to 2,000 jobs. Across the country, millions of jobs have been eliminated in the rush to lighten the corporate sled by tossing overboard anyone who could be considered excess baggage by a Harvard MBA with a calculator for a heart.

Aaron Feuerstein, who went from Boston Latin High School and New York's Yeshiva University right into the mill his father owned, sees things differently: The help is part of the enterprise, not just a cost center to be cut.

"They've been with me for a long time. We've been good to each other, and there's a

deep realization of that, that is not always expressed, except at times of sorrow."

And it is noble sentiments like those, coming at a time when they are most needed, that turns times of sorrow into occasions of triumph. ●

#### VICTIMS RESTITUTION ENFORCEMENT ACT OF 1995

● Mr. ABRAHAM. Mr. President, I ask that the text of my bill, S. 1504, the Victims Restitution Enforcement Act of 1995 be printed in the RECORD.

The text of the bill follows:

S. 1504

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims Restitution Enforcement Act of 1995".

##### SEC. 2. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

##### "§ 3664. Procedure for issuance and enforcement of order of restitution

"(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation service shall so inform the court.

"(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

"(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

"(d)(1)(A) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property or assets necessary to satisfy a criminal restitution order under this subchapter. Such order may be entered in the following circumstances:

"(i) Prior to the filing of an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that—

"(I) there is a substantial probability that the United States will obtain a criminal restitution order;

"(II) the defendant has or is likely to take action to dissipate or hide the defendant's property or assets; and

"(III) the need to preserve the availability of the property or assets through the requested order outweighs the hardship of any party against whom the order is entered.

"(ii) Upon the filing of an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that the defendant has or is likely to take action to dissipate or hide the defendant's property or assets.

"(iii) Upon the conviction, or entry of a guilty plea, to an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that the defendant may take action to dissipate or hide the defendant's property or assets or that an order is necessary to marshal and determine the defendant's property or assets.

"(B) An order entered pursuant to subparagraph (A) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A)(ii) has been filed.

"(2)(A) Except as provided in paragraph (3), an order entered under this subsection shall be after notice to persons appearing to have an interest in the property and opportunity for a hearing, and upon the United States carrying the burden of proof by a preponderance of the evidence.

"(B) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(3)(A) A temporary restraining order may be entered without notice or opportunity for a hearing if the United States demonstrates that—

"(i) there is probable cause to believe that the property or assets with respect to which the order is sought would be subject to execution upon the entry of a criminal restitution order;

"(ii) there is a substantial probability that the United States will obtain a criminal restitution order; and

"(iii) the provision of notice would jeopardize the availability of the property or assets for execution.

"(B) A temporary order under this paragraph shall expire not later than 10 days after the date on which it is entered, unless—

"(i) the court grants an extension for good cause shown; or

"(ii) the party against whom the order is entered consents to an extension for a longer period.

"(C) A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

"(4)(A) Information concerning the net worth, financial affairs, transactions or interests of the defendant presented to the grand jury may be disclosed to an attorney for the government assisting in the enforcement of criminal restitution orders, for use in the performance of that attorney's duties.

"(B)(i) An attorney for the government responsible for the prosecution of criminal offenses, or responsible for the enforcement of criminal restitution orders, may obtain and use consumer credit reports to—

"(I) obtain an order under this section;

"(II) determine the amount of restitution that is appropriate; or

"(III) enforce a criminal restitution order.

"(ii) This subparagraph does not limit the availability of grand jury subpoenas to obtain such credit reports.

"(iii) Upon conviction, such reports may be furnished to the United States Probation Service.

"(e)(1)(A) Within 60 days after conviction, and in any event not later than 10 days prior to sentencing, the attorney for the United States after consulting with all victims (when practicable), shall promptly provide the probation service of the court all information readily available to the attorney, including matters occurring before the grand jury relating to the identity of the victim or victims, the amount of loss, and financial matters relating to the defendant.

“(B) The attorney for the government shall, if practicable, provide notice to all victims. The notice shall inform the victims of the offenses for which the defendant was convicted, the victim’s right to submit information to the probation office concerning the amount of the victim’s losses, and the scheduled date, time, and place of the sentencing hearing.

“(C) Upon ex parte application to the court, and a showing that the requirements of subparagraph (A) may cause harm to any victim, or jeopardize an ongoing investigation, the court may limit the information to be provided to or sought by the probation service of the court.

“(D) If any victim objects to any of the information provided to the probation service by the attorney for the United States, the victim may file a separate affidavit with the court.

“(2) After reviewing the report of the probation service of the court, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible and such records may be filed or testimony heard in camera.

“(3) If the victim’s losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney’s delegee) shall so inform the court, and the court shall set a date for the final determination of the victim’s losses, not to exceed 90 days after sentencing. If the victim’s losses cannot reasonably be ascertained, the court shall determine an appropriate amount of restitution based on the available information. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

“(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

“(5) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

“(f) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant’s dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

“(g)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant.

“(B) If—

“(i) the number of victims is too great;

“(ii) the actual identity of the victims cannot be ascertained; and

“(iii) or the full amount of each victim’s losses cannot be reasonably ascertained;

the court shall order restitution in the amount of the total loss that is reasonably ascertainable.

“(2) The restitution order shall be for a sum certain and payable immediately.

“(3) If the court finds from facts on the record that the economic circumstances of the defendant do not allow and are not likely to allow the defendant to make more than nominal payments under the restitution order, the court shall direct the defendant to make nominal periodic payments in the amount the defendant can reasonably be expected to pay by making a diligent and bona fide effort toward the restitution order entered pursuant to paragraph (1). Nothing in the paragraph shall impair the defendant’s obligation to make full restitution pursuant to paragraphs (1) and (2).

“(4) Notwithstanding any payment schedule entered by the court pursuant to paragraph (2), each order of restitution shall be a civil debt, payable immediately, and subject to the enforcement procedures provided in subsection (n). In no event shall a defendant incur any criminal penalty for failure to make a restitution payment under the restitution order because of the defendant’s indigency.

“(h)(1) No victim shall be required to participate in any phase of a restitution order. If a victim declines to receive restitution made mandatory by this title, the court shall order that the victim’s share of any restitution owed be deposited in the Crime Victims Fund in the Treasury.

“(2) A victim may at any time assign the victim’s interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

“(3) If the victim cannot be located or identified, the court shall direct that the restitution payments be made to the Crime Victims Fund of the Treasury. This paragraph shall not be construed to impair the obligation of the defendant to make such payments.

“(i) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant jointly and severally liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.

“(j) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may issue an order of priority for restitution payments based on the type and amount of the victim’s loss accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

“(k)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

“(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

“(A) any Federal civil proceeding; and

“(B) any State civil proceeding, to the extent provided by the law of the State.

“(3) If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settle-

ment, or other judgment, such person shall be required to apply the value of such resources to any restitution still owed.

“(l) The defendant shall notify the court and the Attorney General of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

“(m)(1) The court shall retain jurisdiction over any criminal restitution judgment or amended criminal restitution judgment for a period of 5 years from the date the sentence was imposed. This limitation shall be tolled during any period of time that the defendant—

“(A) was incarcerated;

“(B) was a fugitive; or

“(C) was granted a stay that prevented the enforcement of the restitution order.

“(2) While within the jurisdiction of the court, if the defendant knowingly fails to make a bona fide effort to pay whatever amount of restitution is ordered by the court, or knowingly and willfully refuses to pay restitution, the court may—

“(A) modify the terms or conditions of the defendant’s probation or supervised release;

“(B) extend the defendant’s probation or supervised release until a date not later than 10 years from the date the sentence was imposed;

“(C) revoke the defendant’s probation or supervised release;

“(D) hold the defendant in contempt; or

“(E) increase the defendant’s sentence to any sentence that might originally have been imposed under the applicable statute, without regard to the sentencing guidelines.

“(n)(1) An order of restitution may be enforced—

“(A) through civil or administrative methods during the period that the restitution lien provided for in section 3613 of title 18, United States Code, is enforceable;

“(B) by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229;

“(C) by the United States regardless of whether for the benefit of the United States, in accordance with the procedures of chapter 176 of part VI of title 28, or in accordance with any other administrative or civil enforcement means available to the United States to enforce a debt due the United States; or

“(D) by any victim named in the restitution order as a lien pursuant to section 1962 of title 28.

“(2) A conviction of a defendant for an offense giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, regardless of any State law precluding estoppel for a lack of mutuality. The victim, in such subsequent proceeding, shall not be precluded from establishing a loss that is greater than the loss determined by the court in the earlier criminal proceeding.”

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

“3664. Procedure for issuance and enforcement of order of restitution.”

### SEC. 3. CIVIL REMEDIES.

Section 3613 of title 18, United States Code, is amended—

(1) in the heading, by inserting “or restitution” after “fine”; and

(2) in subsection (a)—

(A) by striking "A fine" and inserting the following:

"(1) FINES.—A fine";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting accordingly; and

(C) by adding at the end the following new paragraphs:

"(2) RESTITUTION.—(A) An order of restitution shall operate as a lien in favor of the United States for its benefit or for the benefit of any non-Federal victims against all property belonging to the defendant or defendants. The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable. Such lien shall apply against all property and property interests owned by the defendants at the time of arrest as well as all property subsequently acquired by the defendant or defendants.

"(B) The lien shall be entered in the name of the United States in behalf of all ascertained victims, unascertained victims, victims entitled to restitution who choose not to participate in the restitution program and victims entitled to restitution who cannot assert their interests in the lien for any reason.

"(3) JOINTLY HELD PROPERTY.—(A)(i) If the court enforcing an order of restitution under this section determines that the defendant has an interest in property with another, and that the defendant cannot satisfy the restitution order from his or her separate property or income, the court may, after considering all of the equities, order such jointly owned property be divided and sold, upon such conditions as the court deems just, regardless of any Federal or State law to the contrary.

"(ii) The court shall take care to protect the reasonable and legitimate interests of the defendant's innocent spouse and minor children, especially real property used as the actual home of such innocent spouse and minor children, except to the extent that the court determines that the interest of such innocent spouse and children is the product of the criminal activity of which the defendant has been convicted, or is the result of a fraudulent transfer.

"(B) In determining whether there was a fraudulent transfer, the court shall consider whether the debtor made the transfer—

"(i) with actual intent to hinder, delay, or defraud the United States or other victim; or

"(ii) without receiving a reasonably equivalent value in exchange for the transfer.

"(C) In determining what portion of such jointly owned property shall be set aside for the defendant's innocent spouse or children, or whether to have sold or divided such jointly held property, the court shall consider—

"(i) the contributions of the other joint owner to the value of the property;

"(ii) the reasonable expectation of the other joint owner to be able to enjoy the continued use of the property; and

"(iii) the economic circumstances and needs of the defendant and dependents of the defendant and the economic circumstances and needs of the victim and the dependents of the victim."

#### SEC. 4. FINES.

Section 3572(b) of title 18, United States Code, is amended to read as follows:

"(b) Any fine, special assessment, restitution, or cost shall be for a sum certain and payable immediately. In no event shall a defendant incur any criminal penalty for failure to make a payment on a fine, special assessment, restitution, or cost because of the defendant's indigency."

#### SEC. 5. RESENTENCING.

Section 3614 of title 18, United States Code, is amended by inserting "or may increase the defendant's sentence to any sentence that might originally have been imposed under the applicable statute" after "imposed":

#### ERNEST L. BOYER

●Mr. SIMON. Mr. President, in the early part of December, the Nation lost one of the finest public officials it has ever had, Ernest L. Boyer, who was a commissioner of education under President Carter and head of the Carnegie Foundation for the Advancement of Teaching.

I have had the opportunity of working with him on a number of issues. He was a genuinely fine human being and an unusually competent and dedicated public servant.

Those of us who worked with him know that in addition to everything else, he was simply "a nice guy."

His loss is a huge loss to the Nation.

I was pleased with the editorial comment of the Washington Post which I ask to be printed in full in the RECORD.

The article follows:

[From the Washington Post]

ERNEST L. BOYER

The progress of "education reform" is always hard to track: Where are all these "reforms" going, and how can we tell when they get there? One of the few voices that helped answer the latter question was that of Ernest L. Boyer, who died last week. Mr. Boyer, head of the Carnegie Foundation for the Advancement of Teaching, had been commissioner of education under President Carter and before that the president of the State University of New York. He was once introduced to a Washington gathering as "a man who has never had an unpublished thought."

But Mr. Boyer's real contribution, in a debate that tends to be by turns faddish and cacophonous, was not just to be widely heard but to cling tenaciously over the years to a few simple principles. One was that the high school diploma should mean something: Schools, school systems and state legislatures should cease giving graduation credit for shopping-mall-style electives or "business math" and insist on solid fare such as four years of English, two of algebra, history in place of "social studies."

That insistence prevailed in enough places and has been in effect long enough to have produced results, as high schools report toughened standards and a few colleges say students are better prepared. Another strongly held Boyer view was that early childhood education and nutrition made a dramatic difference in children's futures; yet another, that the large schools so popular in the 1960s and 1970s were bad for students who, especially in urban systems and at the critical junior high school level, were suffering already from a lack of adult attention in their lives. "Too often when students 'drop out,'" he wrote, "nobody has ever noticed they had 'dropped in.'"

These ideas, neither complicated nor trendy, can be all the harder to focus public attention on for their lack of drama. But they need to be stated, and stated over and over as the wave of "education reform" launched by the 1983 report called "A National At Risk" gets increasingly diffuse and degenerates into political quarreling. More than anything else, education—real edu-

cation that gets somewhere—implies long and low-key effort, sustained attention to the child at hand. Mr. Boyer was such an educator, whose patience and consistency carried as much influence as the quality of the ideas he put forward.●

#### CARMEN AND VINCENT AITRO

●Mr. LIEBERMAN. Mr. President, I rise today to recognize two exemplary citizens from the State of Connecticut, Carmen and Vincent Aitro. These two men, twin brothers, have worked tirelessly to help their community and to improve the lives of Connecticut's youths. The Aitro brothers have a long-standing history of dedication to the New Haven area community-service organizations.

Carmen and Vincent Aitro have used sports to instill positive values and principles into the young people they involve. They have directed or coached numerous teams and athletic organizations in sports, including baseball, basketball, and softball. Many of their teams excelled on the field, winning numerous league and State championships. The young people coached by the twins have received invaluable benefits, not just in terms of athletic skills, but also, more importantly, skills and attitudes that will aid and guide them throughout their lives.

The Aitro brothers have already been recognized by their community. They have served on the board of directors of many organizations, among which are the Walter Camp Football Foundation, the New Haven Boys and Girls Club Board of Managers, and the Commissioner of the New Haven Housing Authority. The honors Carmen and Vincent have accrued are numerous, but include The Dante Club Old Timers Award, the Andy Papero Bronco League Man of the Year, the Boys Club Alumni Gold Ring Award, and the Walter Camp Award.

Therefore, Mr. President, I believe that these two outstanding individuals should be commended for their many years of service and dedication. These are two men who truly made a difference through their accomplishments, and their nature of generosity and selflessness will long be remembered.●

#### ARTHUR M. WOOD, JR.

●Mr. MACK. Mr. President, I rise today to honor Arthur M. Wood, Jr., who will be awarded the Institute of Human Relations Award on February 20, 1996 by the southwest Florida chapter of the American Jewish Committee. The award is given annually to a member of the community who best exemplifies what the institute stands for—building mutual respect and understanding among America's diverse population groups.

Arthur M. Wood, Jr. was born in Chicago on October 11, 1950. After growing up in northern Illinois and southern California, he graduated from Princeton University with a B.A. degree in