

woman whose abilities were quite remarkable. Those abilities were widely recognized. In 1982, Avis became the first female president of the Missouri Press Association. That was just one of many “firsts” achieved by Avis Tucker, including serving as the first female president of the Missouri Associated Dailies organization, and becoming the first woman inducted into the Missouri Press Association Hall of Fame. She received the National Newspaper Association’s McKinney Award, given to a woman who “exhibited distinguished service to the community press.” Just this past May, Avis became chair emerita of the Missouri Press Association’s Foundation Board, which she helped found and fund.

She served not only as one of the state’s rare female publishers, but in other leadership roles, particularly at our mutual alma mater, the University of Missouri. Mizzou’s world-famous School of Journalism honored her with its Honor Medal in 1976. And in 1972, Avis became the first woman president of the University of Missouri’s governing body, the Board of Curators. Her service as a curator has particular significance for me, since she was appointed to succeed her late husband as a curator upon his death. And Bill Tucker had been appointed to succeed my father, Isaac Newton Skelton III, upon his passing. In Missouri, one of the highest honors one can achieve is being named to help guide our land-grant state university, and this is an honor that has been treasured by both the Skelton and Tucker families.

Avis Green Tucker will be remembered fondly by all who had the privilege of knowing her, including me. When she passed away at age 95 on Friday, December 17th, 2010, she had lived a life that was exemplary. Her leadership was superb, her newspaper’s readers and her community were well-served, and her place in Missouri journalism and public service is secure. Avis is survived by two nephews, Bob and Richard Green. I know members of the Congress will join me in paying tribute to the life, achievements and service of Avis Green Tucker, and in extending our condolences to her family and friends.

EMPTY CHAIR IN OSLO FOR LIU
XIAOBO

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 22, 2010

Mr. SMITH of New Jersey. Madam Speaker, in the theatrical adaptation of Victor Hugo’s *Les Miserables*, Marius sings a haunting song—Empty Chairs and Empty Tables—an expression of agony at the loss of his idealistic comrades, gunned down on a barricade.

“There’s a grief that can’t be spoken,” he sings, “there’s a pain that goes on and on. Empty chairs and empty tables, now my friends are dead and gone . . .”

“Here it was they lit the flame . . . Here they sang about tomorrow and tomorrow never came . . . from the table in the corner they could see a world reborn . . . And they rose with voices ringing. I can hear them now . . . Empty chairs and empty tables, where my friends will meet no more . . .”

When prisoner of conscience Liu Xiaobo, Nobel Peace Prize winner for 2010, learned

that he was selected, he wept and dedicated his prize to the martyrs of the 1989 Tiananmen Square Massacre.

Throughout China today, families and friends know heartbreaking loss and the agony of empty chairs and empty tables—where young, brave, idealistic democracy activists were gunned down, bayoneted, or beaten to death by Chinese government troops and secret police. Both before and since Tiananmen, Chinese men and women have sacrificed their freedom—even their lives—in the struggle for faith and liberty. Yet the struggle for freedom, rule of law, and respect for human rights continues despite the enormous cost to individual Chinese men and women.

At Oslo a couple of weeks ago, I had the privilege of witnessing the conferring of the Nobel Peace Prize on Liu Xiaobo’s empty chair—empty because this courageous non-violent man of principle languishes in a lonely prison cell, serving an eleven-year sentence for promoting democracy in China, most recently through Charter 08, a human rights manifesto. In a stunning revelation of Beijing’s weakness, fear, and moral deficiency, even Liu’s wife and friends were barred from attending the Nobel ceremony.

Amazingly, at his government show trial in 2009, Liu expressed absolutely no malice toward the dictatorship that so cruelly mistreats him—and millions of others like him.

He said, “I have no enemies and no hatred. None of the police who monitored, arrested, and interrogated me, none of the prosecutors who indicted me, and none of the judges who judged me are my enemies . . . Hatred can rot away at a person’s intelligence and conscience. Enemy mentality will poison the spirit of a nation, incite cruel mortal struggles, destroy a society’s tolerance and humanity and hinder a nation’s progress toward freedom and democracy. That is why I hope to be able to transcend my personal experiences as I look upon our nation’s development and social change, to counter the regime’s hostility with utmost goodwill, and to dispel hatred with love.”

The Nobel Peace Prize ceremony has come and gone. And, I would note parenthetically, it was an honor to join you in Oslo, Madam Speaker, as well as Representative David Wu and numerous Tiananmen Square alumnae—Chinese men and women who peacefully demonstrated for freedom in 1989—including Yang Jianli, Chai Ling, Bob Fu, Fang Zheng, and Kaixi Wuer. It is now more important than ever that all of us who treasure freedom, democracy and human rights empathize more, pray more and do more to expose and combat the cruelty and the crimes committed on a daily basis by Beijing.

The brutality and violence that were witnessed by all the world in 1989 at Tiananmen continues unabated today, especially in the gulags—laogai—and detention centers throughout China, where people are systematically tortured, sometimes to death, particularly Falun Gong practitioners, Uyghurs, Tibetans, Christians, and democracy activists.

The brutality and violence of unrestrained dictatorship has—and continues to be—unleashed against hundreds of millions of Chinese women and children—victims of the barbaric one child per couple policy, a cruel policy that has made brothers and sisters illegal and relies on forced abortion—a crime categorized as a “crime against humanity” at the Nazi war crime trial at Nuremberg.

As a result of the one child per couple policy, an estimated 100 million girls are missing—dead through sex-selective abortion—which is a gender crime of unimaginable depravity and has made China a magnet for sex trafficking. Chai Ling—one of the heroes of Tiananmen—has launched All Girls Allowed—an NGO that appeals to Beijing, the world, and especially mothers in China to protect the girl child in the womb.

And finally, even the Internet has been turned into a tool of repression and surveillance by the secret police.

The selection of Liu Xiaobo as the 2010 Nobel Peace Prize laureate obliges us to undertake sustained scrutiny and meaningful action.

Indifference or silence or feigned ignorance concerning the Chinese government’s appalling and massive human rights violations simply isn’t an option.

PERSONAL EXPLANATION

HON. CAROLYN MCCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 22, 2010

Mrs. MCCARTHY of New York. Madam Speaker, I was unavoidably absent on December 21, 2010. If I were present, I would have voted on the following:

H. Res. 1771, Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, and providing for consideration of motions to suspend the rules—rollcall No. 657—“yea”.

H.R. 6540, Defense Level Playing Field Act—rollcall No. 658—“yea”.

H.R. 5116, America COMPETES Reauthorization Act—rollcall No. 659—“yea”.

H.R. 2142, GPRA Modernization Act of 2010—rollcall No. 660—“yea”.

H.R. 2751, FDA Food Safety Modernization Act—rollcall No. 661—“yea”.

H.R. 3082, Making Appropriations for Military Construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010 and for other purposes—rollcall No. 662—“yea”.

H.R. 6547, Protecting Students from Sexual and Violent Predators Act—rollcall No. 663—“yea”.

BLACK: THE DOMINANCE OF
UNETHICAL BANKING

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 22, 2010

Ms. KAPTUR. Madam Speaker, today I am inserting into the CONGRESSIONAL RECORD a recent blog post by Professor William Black from the Associate Professor of Economics and Law at the University of Missouri—Kansas City. Professor Black has focused on white collar crime and routing out of fraud in our financial system, both in practice and as a field of academic study. Professor Black’s answers on this CNN blog give direction to our work on cleaning up our financial system of the criminals while protecting those who follow the law. As this Congress

comes to a close and we look to the future, we are faced with the task of doing more to address the challenges of Main Street while holding Wall Street accountable. Professor Black's writing should be one of our guides.

BLACK: THE DOMINANCE OF UNETHICAL BANKING

(By Jay Kernis)

Only on the blog: Answering today's five OFF-SET questions is William K. Black, Associate Professor of Economics and Law at the University of Missouri—Kansas City.

He was the Executive Director of the Institute for Fraud Prevention from 2005–2007. Black also served as litigation director of the Federal Home Loan Bank Board, deputy director of the FSLIC, SVP and General Counsel of the Federal Home Loan Bank of San Francisco, and Senior Deputy Chief Counsel, Office of Thrift Supervision. He was also deputy director of the National Commission on Financial Institution Reform, Recovery and Enforcement.

You say that fraud by America's major banks plays an enormous continuing role in the country's financial crisis. How widespread is the fraud and what are the most serious charges?

The FBI testified in September 2004 that mortgage fraud was "epidemic" and predicted that it would cause an "economic crisis" if it were not contained. Instead of being contained, FBI data show that it grew enormously after 2004. The mortgage lending industry's own anti-fraud experts (MARI) warned in 2006 that "liar's" loans deserved their name—MARI reported a study finding that 80% of such loans were fraudulent. MARI warned that liar's loans were "an open invitation to fraudsters."

In a liar's loan the lender agrees not to verify the borrower's income, wealth, job, and debts. The lender and its agents, loan brokers, can then make up those numbers to make the loan appear to be only moderately insane and sell the fraudulent loan to an entity, typically an investment banking firm or Fannie Mae or Freddie Mac, who will pool thousands of fraudulent loans together and create a toxic financial derivative called a "CDO." The rating agencies and investment bankers knew they had to engage in the financial version of "don't ask; don't tell" on these CDOs because if they ever really kicked the tires they would all explode—the frauds in the underlying liar's loans from which the CDOs were supposed to "derive" their value were that obvious and common.

A credit ratings firm couldn't give a "AAA" rating (the highest possible—the rating that virtually all these toxic derivatives were given) if it looked at a sample of the loans—so they religiously did not kick the tires on the liar's loans. So we had the farce of "credit rating" agencies whose expertise was supposedly in reviewing credit quality never looking at that credit quality so that they could make enormous fees by giving toxic waste pristine "AAA" ratings.

The investment banks couldn't sell the financial derivatives loans to others if the investment bankers (whose supposed expertise was evaluating credit risk) were to actually look at credit quality of the underlying liar's loans. If they looked, they'd document that the loans were overwhelmingly fraudulent. They'd then have three options.

A. They could sell the CDOs to others by calling them wonderful "AAA" investments—while having files proving that they knew this was a lie. This option is the prosecutor's dream.

B. They could have sued the lenders that sold them the fraudulent liar's loans. The investment banks typically had a clear contractual right to force the fraudulent loans to buy back the liar's loans. But there were

fatal problems with that option. The lenders that made liar's loans typically had minimal capital (net worth). If the investment banks had demanded that they repurchase the loans they would have been unable to do so—and the demand would have exposed the investment banks' bright shining lie that by pooling liar's loans they could create "AAA" CDOs. Every CDO purchaser from the investment banks would then demand that the investment banks repurchased their CDOs—which would have caused virtually every large U.S. investment bank to fail.

C. They could have gone to the Justice Department and expose the massive fraud that was destroying the American economy and help the FBI investigate the lenders specializing in making liar's loans, the corrupt appraisers, and the credit rating agencies. But that would have caused the CDO bubble to burst and the investment banks to fail.

That's why the industry went with the fourth option—"don't ask; don't tell." It's like the famous fable of the emperor and the fraudulent designer. The designer tells everyone that he has created clothes for the emperor of such beauty that only the most sophisticated people can even see the clothes. The emperor and his cronies all agree that the clothes are glorious. The fraud only collapses when a boy blurts out: "the emperor is naked." As long as no one engaged in the frauds pointed out that you can't make a "AAA" rating out of a pool of massively overvalued fraudulent loans the housing bubble could hyper-inflate and the officers of the investment banks and credit rating agencies could become wealthy beyond their dreams.

I cite a study by Fitch, the smallest of the Big 3 rating agencies later that documents the endemic nature of the fraud in the nonprime mortgages backing the CDOs. That study does not contradict the "don't ask; don't tell" strategy because Fitch only published it in November 2007—the secondary market that created CDOs collapsed and it would not lose any fees by asking and telling about the endemic fraud.

The industry sharply increased the number of liar's loans after MARI's warnings that they were overwhelmingly fraudulent. Fitch reviewed a small sample of the nonprime loan and found that there was evidence of fraud in "nearly every" file they reviewed and that the frauds were obvious on the face of the loan and servicing files and would have been discovered by any competent loan underwriting process. Self-reviews by fraudulent nonprime lenders have consistently revealed pervasive fraud in liar's loans. Reviews by independent experts demonstrate that fraud was endemic in liar's loans.

My testimony to the Senate and the Financial Crisis Inquiry Commission (FCIC) explains why the number of criminal referrals the FBI receives annually extrapolates to millions of frauds. There were no formal definitions of an "alt a" or "stated income" loan (the two most common euphemisms for liar's loans and, therefore, all the data are best guesses), but Credit Suisse reported in 2007 that by 2006, 49% of new mortgage loans in the U.S. were stated income (liar's loans). If one assumes an 80% fraud incidence—which is the low end of published studies by independent experts—that translates into millions of fraudulent loans being made in 2006 alone.

State Attorney Generals' investigations have found that it was lenders and their agents who put the lies in "liar's" loans. The NY AG found, for example, that Washington Mutual (WaMu), which specialized in nonprime loans, (and is the largest bank failure in U.S. history) kept a "black list" of appraisers. Appraisers got on the black list, however, if they refused to provide WaMu

with inflated (fraudulent) appraisals. Survey data of appraisers confirms that nonprime lenders and their agents commonly coerced appraisers to inflate market values. The borrower has no leverage to coerce appraisers.

There is no honest reason for a lender to seek, or permit, appraisals to be inflated. White-collar criminologists and competent banking regulators recognize that appraisal fraud is a superb "marker" of "control fraud"—the devastating frauds in which the senior officers that control a seemingly legitimate firm use it as a "weapon" to defraud. Iowa Attorney General Miller testified before the Federal Reserve in 2007 that his investigations found that the lenders and the agents typically prompted or even directly provided the false information in nonprime loan applications.

This makes sense because only lenders and loan brokers would know the key debt-to-income and loan-to-value ratios that would make the borrowers' application more likely to be approved and generate the largest fees to the lenders and their agents. AG Miller even aptly described the "Gresham's" dynamic that prevailed in nonprime lending. A Gesham's dynamic arises in this context when lenders and loan brokers that cheat gain a competitive advantage over honest lenders and agents. The result can be a race to the bottom in which those with no ethics drive the ethical from the marketplace.

Attorneys General in 50 states are investigating mortgage fraud and foreclosure fraud. Do you think this was bad book-keeping or are banks intentionally doing something illegal?

I've explained why the data demonstrate that mortgage fraud, particularly via liar's loans, was endemic, intentional, and driven by the lenders and their agents. Lenders and agents engaged in mortgage fraud do not want to keep accurate records, for those records could provide a roadmap for prosecuting them. The dearth of records was one of the key attractions of liar's loans to these lenders and their agents. That dynamic means that records are commonly missing at lenders engaged in fraud.

Keeping good records is also a pain for loan officers. It is a cost—it slows them down from making new (fraudulent) loans that drive their income. Another marker of loan fraud is paying loan officers large bonuses based on loan volume instead of loan quality—everyone in the trade knows this ends in disaster. But the failure of the lender is not a failure of the fraud scheme. Here's the four-part recipe for lenders maximizing fictional short-term accounting income (thereby maximizing their bonuses). Note that the same recipe maximizes real losses:

A. Grow extremely rapidly
B. Make very bad loans at high interest rates ("yield")
C. Use extreme leverage (high debt relative to you equity)

D. Provide grossly inadequate loss reserves

A lender that follows this recipe is mathematically guaranteed to report record (albeit fictional) income in the near term—and to cause massive losses in the longer term. This is why the Nobel prize winning economist, George Akerlof and his colleague Paul Romer wrote the famous 1993 article entitled: "Looting: the Economic Underworld of Bankruptcy for Profit." They describe accounting fraud as "a sure thing." The lender fails, but the senior officers walk away wealthy. Since 1993, things have become far worse—we now often bail out the failed lenders and leave the thieves in charge.

But a lender making thousands of bad loans has to gut its "back office" operations—the folks who are supposed to document loans and prevent bad loans. We know that this is exactly what happened. Bank officers and employees of nonprime lenders

were reamed out by their superiors if they tried to block the bad loans. This dynamic is an independent reason why recordkeeping at the nonprime lenders is often horrific.

Finally, lenders like Bank of America, Citibank, and WaMu acquired major nonprime lenders that were notorious for their predatory and fraudulent lending. These banks then often place the employees they obtained via these mergers in charge of loan servicing. It was utterly predictable that they would continue their unethical practices when they functioned as loan servicers—particularly because the alternative would be to admit that their loan servicing files were a shambles. Far better to simply file false affidavits and claim that everything was in order—which is exactly what many of the largest loan servicers did ten thousand times a month.

This is one of the reasons that my colleague Randy Wray and I have called for Bank of America to be placed promptly into receivership. A minor blue collar thief can go to prison for life under some “three strikes” laws—a huge bank doesn’t even suffer a major loss of reputation when it commits a hundred thousand felonies. The U.S. now has its own version of crony capitalism that has produced recurrent, intensifying financial crises—just as crony capitalism does in many nations. The difference is that our economy is so massive that when we have a crisis many nations suffer. When a nation’s elites are able to cheat with impunity the result is always disastrous.

What should President Obama and Congress be doing right now to regulate the banks in a meaningful and fair way?

Economists, white-collar criminologists, and regulators agree that the key is to stop, or at least limit, perverse incentives. Intensely criminogenic environments lead to epidemics of control fraud. There are six key components of what makes an environment dangerously criminogenic.

A. Size matters. A tremendous bubble in the price of persimmons won’t harm the U.S. economy. Real estate bubbles, by contrast, could cause losses that were a large percentage of the U.S. GDP. That’s how you get a Great Recession. Accounting control frauds are particularly dangerous because of they can grow so rapidly and because they tend to cluster in the assets that are most ideal for accounting fraud. The combination of clustering and rapid growth means that epidemics of accounting control fraud can hyper-inflate massive bubbles. Akerlof & Romer and my work have long warned specifically about this danger.

The federal regulatory and prosecutorial agencies are filled with “chief economists,” but there are no “chief criminologists”, no comprehensive federal data on the most destructive white-collar crimes, and virtually zero federal funding for research into the elite financial frauds that have caused trillions of dollars of losses in the U.S. over the last 20 years. We need to do the opposite—hire chief criminologists, keep comprehensive data on the worst frauds, and fund research so that we can actively identify the industries at greatest risk of developing the next epidemic of control fraud. (And this needs to be done not only for banks. The FDA, for example, needs help in spotting frauds that maim and kill.) We then need to act, quickly, to stop those epidemics in their tracks. We did this in 1990-91 as S&L regulators when we stopped the rapid spread of “liar’s” loans at several California S&Ls.

B. Deregulation, desupervision (the rules remain in place but the anti-regulators running the regulatory agencies don’t enforce them) and de facto decriminalization (the three “de’s”) produce the ideal criminogenic environment. The regulators are the “cops

on the beat” when it comes to sophisticated frauds. If you remove the cops of the beat, cheaters prosper and honest businesses are driven from the markets. President Obama largely kept in place the failed anti-regulators he inherited from President Bush. Indeed, Obama promoted Geithner—an abject failure as a regulator in his capacity as President of the NY Fed—and renominated Bernanke, an even greater failure. Obama should fire Attorney General Holder and Treasury Secretary Geithner and ask Chairman Bernanke to resign. He should appoint regulators and prosecutors who have a track record of success.

C. Executive compensation. There is a consensus that executive compensation should be based on long-term (real) profitability. In reality, executive compensation is overwhelmingly based on short-term reported income. (It’s actually worse than that—if the short-term results are bad corporations commonly gimmick the compensation system to reward the senior officers’ failures.) Everyone agrees that short-term reported accounting income is easy to inflate through accounting fraud and virtually everyone agrees that this creates strong, perverse incentives. Since, the current crisis began, the percentage of bonus compensation based on short-term reported income has increased—executive compensation has become more perverse.

Note that executive compensation also allows the CEO to convert the firm’s assets to his personal benefit using seemingly normal corporate mechanisms, which makes it far harder to prosecute the CEO for looting the firm. All bonus income that takes annual income above \$200,000 should be paid after five years—if the firm’s reported income turns out to be real. There should be “clawback” provisions to recover bonuses even after those five years if they were based on corporate income inflated by fraud or “window dressing.”

D. Professional compensation is perverse. Accounting control frauds deliberately exploit this to create the Gresham’s dynamic that allow them to suborn the outside professionals—appraisers, attorneys, auditors, and rating agencies—who are supposed to prevent fraud, but who actually become the frauds’ most valuable allies. Honest professionals don’t get hired, the unethical professionals prosper. This process creates “echo” epidemics of control fraud. Fraudulent nonprime lenders, for example, shaped financial incentives to be perverse to create endemic appraisal and loan broker fraud. The banks should not be able to hire or fire the appraisers, credit rating agencies, and auditors—except for fraud or serious incompetence. Those professionals can only be truly independent if they are assigned to work for the bank by a truly independent entity.

E. The federal government has permitted banks to inflate their reported incomes and “net worth” for the purpose of evading the mandatory statutory duty under the Prompt Corrective Action (PCA) law to close deeply insolvent banks. Congress, at the behest of the Chamber of Commerce, the banking trade associations, and Chairman Bernanke, successfully extorted the Financial Accounting Standards Board (FASB) to scam the accounting rules so that the banks could fail to recognize on their accounting reports over a trillion dollars in losses.

When banks understate their losses massively they, by definition, overstate their net worth massively. The PCA’s provisions kick in when net worth falls, so the accounting lies have gutted the PCA. The accounting lies also allow the banks to (once again) report high fictional income when they are experiencing large, real losses. This accounting

scam allows the bank executives to collect hundreds of billions of dollars in bonuses. We should end the accounting scam and enforce the PCA.

We are also secretly subsidizing banks and hiding their losses through massive loans from the Federal Reserve backed by toxic collateral. We should end those subsidies and force them to post good collateral.

F. Systemically dangerous institutions (SDIs) have often become far larger and more dangerous since the crisis. The administration is taking no serious steps to protect us against the roughly 20 SDIs even though the administration claims that when one of them next fails it is likely to cause a global financial crisis. Why are we juggling 20 live grenades? The only question is when the next pin will drop out and we’ll be blown up.

The good news about the SDIs is that they have reason to exist. They would be far more efficient if they shrank in size to levels at which they no longer endangered the global economy. We should do three things about the SDIs. One, stop their growth—immediately. Two, order them to shrink over the next five years to a size at which they no longer are SDIs. Let them decide what operations to sell. Three, intensively regulate the SDIs during those five years. That includes placing any insolvent SDIs in “pass through receiverships”—which does not prompt crises.

If there were one questionable banking practice that you could stop today, what would that be?

The foreclosure frauds.

You have spent decades examining what goes on in banks. Do think that bankers, either through culture or genetics, are ethically-challenged?

When you allow a *Gresham’s dynamic* to operate and when entry to an industry is easy (as it was for loan brokers and mortgage bankers), you concentrate the least ethical business leaders in the industry that is most criminogenic. In the last decade, banking has been severely criminogenic in the U.S. and much of the world. The unethical banking leaders became dominant. Their banks, which followed the four-part recipe for maximizing fictional accounting income, became far larger and drew the greatest praise from the business boosters than dominated the financial media. They made their reputations and their fortunes through fraud.

PERSONAL EXPLANATION

HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 22, 2010

Ms. GRANGER. Madam Speaker, on rollcall Nos. 662 and 661, I was absent from the House. Had I been present, I would have voted “no.”

THANK YOU FOR ALLOWING ME
TO SERVE

HON. CAROLYN C. KILPATRICK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 22, 2010

Ms. KILPATRICK of Michigan. Dear Madam Speaker, as I leave Congress as the people’s representative for the 13th Congressional District of Michigan, I thank God, who is the head