goes on today. What goes on today is, companies such as Goldman Sachs borrow money from the Fed—and I have no reason to doubt that Goldman Sachs also was on the receiving end of these zero interest loans—and they borrow this money for a tenth of a percent, maybe a quarter of a percent, and then they take that money and they invest it in U.S. Treasury securities at 3.5 to 4 percent. That is a pretty good deal. Talk about welfare. Borrow money at zero or half a percent, lend it to the U.S. Government, which has the entire faith and credit of American history behind it, and you make 3 percent, 4 percent. What a deal. That is a pretty good deal. I think we have to end those types of practices and we have to move forward with real transparency at the Fed.

The other thing we have to do, which is enormously important, is have these large financial institutions start lending money to small- and medium-sized businesses that are prepared to create meaningful jobs in this country.

Earlier today, I think the Presiding Officer and I heard from former President Clinton, who made a very important point. He believes—and I agree with him—we can make profound changes in our economy; that over a period of years we can create millions of jobs as we transform our energy system away from fossil fuels to energy efficiency and to sustainable energy. There are small businesses in the energy business in this country that are ready to go, to create the jobs, if they can get reasonable loans, and they can't get that money today. We can transform our energy system. We can give a real spirit to our economy. We can create good-paying jobs, but we have to demand that Wall Street start investing in the real economy.

Another issue I intend to play an active role in is this issue of too big to fail. I have said it once. I have said it many times. If a financial institution is too big to fail, it is too big to exist. We now have four major financial institutions which, if any one of them collapsed today, would bring down the entire economy, and what we have to do is start breaking them up now—now. We have to take action at this point.

I think the American people are angry and they are angry for some good reasons. They are hurting financially. As I mentioned earlier, there are millions of Americans today who have seen a substantial decline in their income and are working incredibly hard and they are wondering what has happened. Then, despite all that, with the trend that has led to the collapse of the middle class as a result of Wall Street greed, we have been driven into a major recession.

The American people want us to have the courage to stand up to Wall Street. I should say that in 2009 alone, our good friends on Wall Street who have unlimited resources spent $300 million in lobbying this institution. They spent $300 million. When they fought for the deregulation over a period of 10 years, they spent $5 billion to be able to engage in the activities which they did engage in and that led us to the recession we are in right now.

So these guys, I guess they can borrow zero interest loans from the Fed—I don't know if they can use that for lobbying or whatever—but they have an unlimited sum of money. I think the American people want us to have the courage to stand with them, to take these guys on no matter how powerful and wealthy they may be. I think the eyes of the country and the eyes of the world will be on what we do.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

COOKING THE BOOKS

Mr. KAUFMAN. Mr. President, last Thursday, the bankruptcy examiner for Lehman Brothers Holding Company released a 2,200-page report about the demise of the firm, which included riveting detail on the firm's accounting practices. That report has put into sharp relief what many of us have expected all along: that fraud and potential criminal conduct were at the heart of the financial crisis.

Now that we are beginning to learn many of the facts, at least with respect to the activities at Lehman Brothers, the country has every right to be outraged. Lehman was cooking its books, hiding $50 billion in toxic assets by temporarily shifting them off its balance sheet in time to produce rosier quarter-end reports. According to the bankruptcy examiner's report, Lehman Brothers's financial statements were ''materially misleading'' and said its executives engaged in ''actionable balance sheet manipulation.'' Only further investigation will determine whether the individuals involved can be indicted or convicted of criminal wrongdoing.

According to the examiner's report, Lehman used accounting tricks to hide billions in debt from its investors and the public. Starting in 2001, that firm began abusing financial transactions called repurchase agreements or repos. Repos are basically short-term loans that exchange collateral for cash in trades that may be unwound as soon as the next day. While investment banks have come to overrely on repos to finance their operations, they are neither illegal nor questionable, assuming, of course, they are clearly accounted for.

Lehman structured some of its repo agreements so the collateral was worth 105 percent of the cash it received—hence, the name ''Repo 105.'' As explained by the New York Times' DealBook:

> That meant that for a few days—and by the fourth quarter of 2007 that meant end-of-quarter—Lehman could shuffle off tens of billions of dollars in assets to appear more financially healthy than it really was.

Even worse, Lehman's management trumpeted how the firm was decreasing its leverage so investors would not flee from the firm. But inside Lehman, according to the report, someone described the Repo 105 transactions as ''window dressing,'' a nice way of saying they were designed to mislead the public.

Ernst & Young, Lehman's outside auditor, apparently became comfortable with and never objected to the Repo 105 transactions. While Lehman could never find a U.S. law firm to provide an opinion that treating the Repo 105 transactions as a sale for accounting purposes was legal, the British law firm Linklaters provided an opinion letter under British law that they were sales and not merely financing agreements. Lehman ran the transaction through its London subsidiary and used several different foreign bank counterparties.

The SEC and Justice Department should pursue a thorough investigation, both civil and criminal, to identify every last person who had knowledge Lehman was misleading the public about its troubled balance sheet—and that means everyone from the Lehman executives, to its board of directors, to its accounting firm, Ernst & Young. Moreover, if the foreign bank counterparties who purchased the now infamous ''Repo 105s'' were complicit in the scheme, they should be held accountable as well.

It is high time that we return the rule of law to Wall Street, which has been seriously eroded by the deregulatory mindset that captured our regulatory agencies over the past 30 years, a process I described at length in my speech on the floor last Thursday. We became enamored of the view that self-regulation was adequate, that ''rational'' self-interest would motivate counterparties to undertake stronger and better forms of due diligence than any regulator could perform, and that market fundamentalism would lead to the best outcomes for the most people. Transparency and vigorous oversight by outside accountants were supposed to keep our financial system credible and sound.

The allure of deregulation, instead, led to the biggest financial crisis since 1929. And now we are learning, not surprisingly, that fraud and lawlessness were key ingredients in the collapse as well. Since the fall of 2008, Congress, the Federal Reserve and the American taxpayer have had to step into the breach—at a direct cost of more than $2.5 trillion—because, as so many experts have said: ''We had to save the system.''

But what exactly did we save?

First, a system of overwhelming and concentrated financial power that has become dangerous. It caused the crisis of 2008–2009 and threatens to cause another major crisis if we do not enact fundamental reforms. Only six U.S. banks control assets equal to 63 percent of the nation's gross domestic product, while oversight is splintered among various regulators who are often overmatched in assessing weaknesses at these firms.

Second, a system in which the rule of law has broken yet again. Big banks can get away with extraordinarily bad behavior—conduct that would not be tolerated in the rest of society, such as the blatant gimmicks used by Lehman, despite the massive cost to the rest of us.

What lessons should we take from the bankruptcy examiner's report on Lehman, and from other recent examples of misleading conduct on Wall Street? I see three.

First, we must undo the damage done by decades of deregulation. That damage includes—financial institutions that are ''too big to manage and too big to regulate''—as former FDIC Chairman Bill Isaac has called them—a ''wild west'' attitude on Wall Street, and colossal failures by accountants and lawyers who misunderstand or disregard their role as gatekeepers. The rule of law depends in part on manageably-sized institutions, participants interested in following the law, and gatekeepers motivated by more than a paycheck from their clients.

Second, we must concentrate law enforcement and regulatory resources on restoring the rule of law to Wall Street. We must treat financial crimes with the same gravity as other crimes, because the price of inaction and a failure to deter future misconduct is enormous.

Third, we must help regulators and other gatekeepers not only by demanding transparency but also by providing clear, enforceable ''rules of the road'' wherever possible. That includes studying conduct that may not be illegal now, but that we should nonetheless consider banning or curtailing because it provides too ready a cover for financial wrongdoing.

The bottom line is that we need financial regulatory reform that is tough, far-reaching, and untainted by discredited claims about the efficacy of self-regulation.

When Senators LEAHY, GRASSLEY and I introduced the Fraud Enforcement and Recovery Act—FERA—last year, our central objective was restoring the rule of law to Wall Street. We wanted to make certain that the Department of Justice and other law enforcement authorities had the resources necessary to investigate and prosecute precisely the sort of fraudulent behavior allegedly engaged in by Lehman Brothers that we learned about recently.

We all understood that to restore the public's faith in our financial markets and the rule of law, we must identify, prosecute, and send to prison the participants in those markets who broke the law. Their fraudulent conduct has severely damaged our economy, caused devastating and sustained harm to countless hard-working Americans, and contributed to the widespread view that Wall Street does not play by the same rules as Main Street.

FERA, signed into law in May, ensures that additional tools and resources will be provided to those charged with enforcement of our Nation's laws against financial fraud. Since its passage, progress has been made, including the President's creation of an interagency Financial Fraud Enforcement Task Force, but much more needs to be done.

Many have said we should of seek to punish anyone, as all of Wall Street was in a delirium of profitmaking and almost no one foresaw the sub-prime crisis caused by the dramatic decline in housing values. But this is not about retribution. This is about addressing the continuum of behavior that took place—some of it fraudulent and illegal—and in the process addressing what Wall Street and the legal and regulatory system underlying its behavior have become.

As part of that effort, we must ensure that the legal system tackles financial crimes with the same gravity as other crimes. When crimes happened in the past—as in the case of Enron, when aided and abetted by, among others, Merrill Lynch, and not prevented by the supposed gatekeepers at Arthur Andersen—there were criminal convictions. If individuals and entities broke the law in the lead up to the 2008 financial crisis—such as at Lehman Brothers, which allegedly deceived everyone, including the New York Fed and the SEC—there should be civil and criminal cases that hold them accountable.

If we uncover bad behavior that was nonetheless lawful, or that we cannot prove to be unlawful, as may be exemplified by the recent reports of actions by Goldman Sachs with respect to the debt of Greece, then we should review our legal rules in the United States and perhaps change them so that certain misleading behavior cannot go unpunished again. This will not be easy. As the Wall Street Journal's ''Heard on the Street'' noted last week, ''Give Wall Street a rule and it will find a loophole.''

This confirms what I heard on December 9 of last year when I convened an oversight hearing on FERA. As that hearing made clear, unraveling sophisticated financial fraud is an enormously complicated and resource-intensive undertaking, because of the nature of both the conduct and the perpetrators.

Rob Khuzami, head of the SEC's enforcement division, put it this way during the hearing:

> White-collar area cases, I think, are distinguishable from terrorism or drug crimes, for the primary reason that, often, people are plotting their defense at the same time they're committing their crime. They are smart people who understand that they are crossing the line, and so they are papering the record or having veiled or coded conversations that make it difficult to establish a wrongdoing.

In other words, Wall Street criminals not only possess enormous resources but also are sophisticated enough to cover their tracks as they go along, often with the help, perhaps unwitting, of their lawyers and accountants.

Assistant Attorney General Lanny Breuer and Khuzami, along with Assistant FBI Director Kevin Perkins, all emphasized at the hearing the difficulty of proving these cases from the historical record alone. The strongest cases come with the help of insiders, those who have first-hand knowledge of not only conduct but also motive and intent. That is why I have applauded the efforts of the SEC and DOJ to use both carrots and sticks to encourage those with knowledge to come forward.

At the conclusion of that hearing in December, I was confident that our law enforcement agencies were intensely focused on bringing to justice those wrongdoers who brought our economy to the brink of collapse.

Going forward, we need to make sure that those agencies have the resources and tools they need to complete the job. But we are fooling ourselves if we believe that our law enforcement efforts, no matter how vigorous or well funded, are enough by themselves to prevent the types of destructive behavior perpetrated by today's too-big, too-powerful financial institutions on Wall Street.

I am concerned that the revelations about Lehman Brothers are just the tip of the iceberg. We have no reason to believe that the conduct detailed last week is somehow isolated or unique. Indeed, this sort of behavior is hardly novel. Enron engaged in similar deceit with some of its assets. And while we don't have the benefit of an examiner's report for other firms with a business model like Lehman's, law enforcement authorities should be well on their way in conducting investigations of whether others used similar ''accounting gimmicks'' to hide dangerous risk from investors and the public.

At the same time, there are reports that raise questions about whether Goldman Sachs and other firms may have failed to disclose material information about swaps with Greece that allowed the country to effectively mask the full extent of its debt just as it was joining the European Monetary Union, EMU. We simply do not know whether fraud was involved, but these actions have kicked off a continent-wide controversy, with ramifications for U.S. investors as well.

In Greece, the main transactions in question were called cross-currency swaps that exchange cash flows denominated in one currency for cash flows denominated in another. In Greece's case, these swaps were priced ''off-market,'' meaning that they didn't use prevailing market exchange rates. Instead, these highly unorthodox transactions provided Greece with a large upfront payment, and an apparent reduction in debt, which they then paid off through periodic interest payments and finally a large ''balloon'' payment at the contract's maturity. In other words, Goldman Sachs allegedly provided Greece with a loan by another name.

The story, however, does not end there. Following these transactions, Goldman Sachs and other investment banks underwrote billions of Euros in bonds for Greece. The questions being raised include whether some of these bond offering documents disclosed the true nature of these swaps to investors, and, if not, whether the failure to do so was material.

These bonds were issued under Greek law, and there is nothing necessarily illegal about not disclosing this information to bond investors in Europe. At least some of these bonds, however, were likely sold to American investors, so they may therefore still be subject to applicable U.S. securities law. While ''qualified institutional buyers,'' QIBs, in the United States are able to purchase bonds, such as the ones issued by Greece, and other securities not registered with the SEC under Securities Act of 1933, the sale of these bonds would still be governed by other requirements of U.S. law. Specifically, they presumably would be subject to the prohibition against the sale of securities to U.S. investors while deliberately withholding material adverse information.

The point may be not so much what happened in Greece, but yet again the broader point that financial transactions must be transparent to the investing public and verified as such by outside auditors. AIG fell in large part due to its credit default swap exposure, but no one knew until it was too late how much risk AIG had taken upon itself. Why do some on Wall Street resist transparency so? Lehman shows the answer: everyone will flee a listing ship, so the less investors know, the better off are the firms which find themselves in a downward spiral. At least until the final reckoning.

Who is to blame for this state of affairs, where major Wall Street firms conclude that hiding the truth is okay? Well, there is plenty of blame to go around. As I said previously, both Congress and the regulators came to believe that self-interest was regulation enough. In the now-immortal words of Alan Greenspan, ''Those of us who have looked to the self-interest of lending institutions to protect shareholder's equity—myself especially—are in a state of shocked disbelief.'' The time has come to get over the shock and get on with the work.

What about the professions? Accountants and lawyers are supposed to help insure that their clients obey the law. Indeed they often claim that simply by giving good advice to their clients, they are responsible for far more compliance with the law than are government investigators. That claim rings hollow, however, when these professionals now seem too often focused on helping their clients get around the law.

Experts such as Professor Peter Henning of Wayne State University Law School, looking at the Lehman examiner's report on the Repo 105 transactions, are stunned that the accountant Ernst & Young never seemed to be troubled in the least about it. Of course, the fact that a Lehman executive was blowing a whistle on the practice in May 2008 did not change anything, other than to cause some discomfort in the ranks.

While saying he was confident he could clear up the whistleblower's concerns, the lead partner for Lehman at Ernst & Young wrote that the letter and off-balance sheet accounting issues were ''adding stress to everyone.''

As Professor Henning notes, one of the supposed major effects of the Sarbanes-Oxley Act was to empower the accountants to challenge management and ensure that transactions were accounted for properly. Indeed, it was my predecessor, then-Senator BIDEN, who was the lead author of the provision requiring the CEO and CFO to attest to the accuracy of financial statements, under penalty of criminal sanction if they knowingly or willfully certified materially false statements. I don't believe this is a failure of Sarbanes-Oxley. A law is not a failure simply because some people subsequently violate it.

I am deeply disturbed at the apparent failure of some in the accounting profession to change their ways and truly undertake the profession's role as the first line of defense—the gatekeeper—against accounting fraud. In just a few years time since the Enron-related death of the accounting firm Arthur Andersen, one might have hoped that ''technically correct'' was no longer a defensible standard if the cumulative impression left by the action is grossly misleading. But apparently that standard as a singular defense is creeping back into the profession.

The accountants and lawyers weren't the only gatekeepers. If Lehman was hiding balance sheet risks from investors, it was also hiding them from rating agencies and regulators, thereby allowing it to delay possible ratings downgrades that would increase its capital requirements. The Repo 105 transactions allowed Lehman to lower its reported net leverage ratio from 17.3 to 15.4 for the first quarter of 2008, according to the examiner's report. It was bad enough that the SEC focused on a misguided metric like net leverage when Lehman's gross leverage ratio was much higher and more indicative of its risks. The SEC's failure to uncover such aggressive and possibly fraudulent accounting, as was employed on the Repo 105 transactions, provides a clear indication of the lack of rigor of its supervision of Lehman and other investment banks.

The SEC in years past allowed the investment banks to increase their leverage ratios by permitting them to determine their own risk level. When that approach was taken, it should have been coupled with absolute transparency on the level of risk. What the Lehman example shows is that increased leverage without the accountants and regulators and credit rating agencies insisting on transparency is yet another recipe for disaster.

Mr. President, last week's revelations about Lehman Brothers reinforce what I have been saying for some time. The folly of radical deregulation has given us financial institutions that are too big to fail, too big to manage, and too big to regulate. If we have any hope of returning the rule of law to Wall Street, we need regulatory reform that addresses this central reality.

As I said more than a year ago:

> At the end of the day, this is a test of whether we have one justice system in this country or two. If we don't treat a Wall Street firm that defrauded investors of millions of dollars the same way we treat someone who stole $500 from a cash register, then how can we expect our citizens to have faith in the rule of law? For our economy to work for all Americans, investors must have confidence in the honest and open functioning of our financial markets. Our markets can only flourish when Americans again trust that they are fair, transparent, and accountable to the laws.

The American people deserve no less.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

Mr. UDALL of Colorado. Mr. President, before I speak to the topic that brought me to the floor tonight, I want to acknowledge the Presiding Officer's remarks on the situation with Lehman Brothers and others on Wall Street. I know that the Senator is on a mission, and nothing would make him happier, nor me happier, if the story of Lehman Brothers is a story that is told for the last time, much less written for the last time.

I listened with great interest to the narrative that is now unfolding, and with that interest also the sense of horror and outrage and anger that the Presiding Officer clearly carries. A crime is a crime, as it was pointed out, whether it is $500 from a cash register or literally billions, in fact trillions of dollars of net worth that we have seen taken from Americans and American families.

I commend the Presiding Officer for his leadership, and I think he put it well when he pointed out if you are too big to fail, you are too big to exist, and too bad. Never again should that happen. So I wanted to acknowledge the Presiding Officer.

SOLAR UNITING NEIGHBORHOODS ACT

Mr. UDALL of Colorado. Mr. President, I want to speak about a bill that is born from the forward-thinking ideas of our constituents—a bill that will